

VOLUME FIVE OF NINE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Perry M. Buckner, Circuit Court Judge

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S.C. SUPREME COURT

JOHN EDWARD WEIK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	2222
RETURN	2229
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2274
RETURN TO AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2279
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2365
MOTION TO FILE A THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF OR IN THE ALTERNATIVE TO AMEND THE APPLICATION FOR POST CONVICTION RELIEF TO CONFORM TO THE EVIDENCE	2373
THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2376
APPLICANT'S MOTION TO AMEND HIS PETITION A FIFTH TIME	2385
POST-CONVICTION RELIEF HEARING TRANSCRIPT	2392
DEPOSITION OF MARVA HARDEE-THOMAS DATED AUGUST 17, 2006	3149
DEPOSITION EXHIBIT 1 (PETITIONER) (CERTIFICATE)	3328
DEPOSITION EXHIBIT 2 (PETITIONER) (LETTER FROM RICKBORN INVESTIGATORS)	3329
DEPOSITION EXHIBIT 3 (PETITIONER) (LETTER TO PATTI RICKBORN DATED APRIL 30, 1999)	3331
DEPOSITION EXHIBIT 4 (PETITIONER) (LETTER FROM PATTI RICKBORN)	3333
DEPOSITION EXHIBIT 5 (PETITIONER) (LETTER TO PATTI RICKBORN)	3337

DEPOSITION OF GEOFFREY R. MCKEE DATED OCTOBER 3, 2006	3347
DEPOSITION EXHIBIT 1 (APPLICANT) (AFFIDAVIT OF DR. MCKEE)	3391
DEPOSITION EXHIBIT 2 (APPLICANT) (DR. MCKEE'S NOTES)	3394
DEPOSITION EXHIBIT 3 (APPLICANT) (DR. MCKEE'S NOTES)	3395
DEPOSITION EXHIBIT 4 (APPLICANT) (DR. CRAWFORD'S EVALUATION)	3396
DEPOSITION EXHIBIT 1 (RESPONDENT) (DR. MCKEE'S BILL)	3401
DEPOSITION OF PATRICIA D. RICKBORN DATED OCTOBER 3, 2006	3402
DEPOSITION EXHIBIT 1 (PETITIONER) (LETTER FROM PATRICIA RICKBORN DATED MARCH 1, 1999)	3463
DEPOSITION EXHIBIT 2 ((PETITIONER) (NOTES FROM PATRICIA RICKBORN'S FILE)	3464
DEPOSITION EXHIBIT 3 (PETITIONER) (LETTER FROM MARVA-HARDEE THOMAS TO PATRICIA RICKBORN DATED APRIL 30, 1999)	3497

EXHIBITS FROM POST-CONVICTION RELIEF HEARING

PLAINTIFF'S EXHIBIT 1 (POTENTIAL WITNESS LIST)	3499
PLAINTIFF'S EXHIBIT 2 (DR. CRAWFORD'S REPORT DATED MAY 13, 1999)	3515
PLAINTIFF'S EXHIBIT 3 (INTERVIEW OF LILLIE VARNER FERRER WEIK)	3519
PLAINTIFF'S EXHIBIT 4 (INTERVIEW OF RUSSELL CHRISTOPHER WEIK)	3524
PLAINTIFF'S EXHIBIT 5 (INTERVIEW OF RUSSELL CHRISTOPHER WEIK)	3530
PLAINTIFF'S EXHIBIT 6 (INTERVIEW OF MAGDALENA AND JOHN GUNTER)	3533
PLAINTIFF'S EXHIBIT 7 (ARMED FORCES REPORT OF TRANSFER OR DISCHARGE - RUSSELL CHRISTOPHER WEIK)	3535
PLAINTIFF'S EXHIBIT 8 (HISTORY OF ASSIGNMENTS)	3536
PLAINTIFF'S EXHIBIT 9 (LETTER TO MICHAEL O'CONNELL FROM THE DEPARTMENT OF THE NAVY)	3537

PLAINTIFF'S EXHIBIT 10 (LETTER TO RUSSELL CHRISTOPHER WEIK FROM THE DEPARTMENT OF VETERANS AFFAIRS).....	3564
PLAINTIFF'S EXHIBIT 11 (PHYSICIAN'S ORDERS).....	3565
PLAINTIFF'S EXHIBIT 12 (IDENTIFICATION CARDS)	3566
PLAINTIFF'S EXHIBIT 13 (CONFIDENTIAL ATTORNEY WORK REPORT).....	3585
PLAINTIFF'S EXHIBIT 14 (WEIK FAMILY TREE).....	3619
PLAINTIFF'S EXHIBIT 15 (AFFIDAVIT OF RAMONDA FERRER-KLOCEK)	3620
PLAINTIFF'S EXHIBIT 16 (AFFIDAVIT OF EDWIN WEIK, JR.)	3625
PLAINTIFF'S EXHIBIT 17 (ORDER OF APPOINTMENT OF LEGAL COUNSEL).....	3628
PLAINTIFF'S EXHIBIT 18 (NOTES FROM PATRICIA RICKBORN'S FILE)	3629
PLAINTIFF'S EXHIBIT 19 (ORDER OF APPOINTMENT OF LEGAL COUNSEL).....	3669
RESPONDENT'S EXHIBIT 1 (BILL FROM PRIVATE INVESTIGATOR)	3670
RESPONDENT'S EXHIBIT 2 (NOTES FROM PRIVATE INVESTIGATOR).....	3671
RESPONDENT'S EXHIBIT 3 (BILL FROM DR. DONALD MORGAN).....	3674
RESPONDENT'S EXHIBIT 4 (INVOICE BJ JOHNS INVESTIGATIVE SERVICES).....	3675
RESPONDENT'S EXHIBIT 5 (QUESTION CHECKLIST).....	3676
RESPONDENT'S EXHIBIT 6 (RATING SYSTEM).....	3680
RESPONDENT'S EXHIBIT 7 (REVERSE-BATSON GENDER/RACE NEUTRAL REASONS).....	3682
RESPONDENT'S EXHIBIT 8 (MEMO FROM JEFF BLOOM)	3685
RESPONDENT'S EXHIBIT 9 (DR. CRAWFORD'S REPORT DATED MAY 13, 1999).....	3692
RESPONDENT'S EXHIBIT 10 (PSYCHOLOGICAL EVALUATION)	3698
RESPONDENT'S EXHIBIT 11 (MEDICAL RECORDS FOR WEIK – ADMISSION DATE APRIL 30, 1999).....	3701
RESPONDENT'S EXHIBIT 12 (MEDICAL RECORDS FOR WEIK – ADMISSION	

DATE SEPTEMBER 28, 1998).....	3768
RESPONDENT'S EXHIBIT 13 (BILL FROM DR. RODGERS)	3837
RESPONDENT'S EXHIBIT 14 (BILL FROM PERRY BEAU FORD, P.A.).....	3838
RESPONDENT'S EXHIBIT 15 (MEMO FROM RICKBORN INVESTIGATIONS).....	3855
RESPONDENT'S EXHIBIT 18 (LETTER TO LT. ARNOLD PASTER DATED FEBRUARY 19, 1999)	3858
RESPONDENT'S EXHIBIT 19 (LETTER TO DR. WILLIAM BRANNON DATED FEBRUARY 19, 1999)	3859
RESPONDENT'S EXHIBIT 20 (LETTER TO MR. JAMES A. SPRINGS, JR. DATED MARCH 2, 1999)	3860
RESPONDENT'S EXHIBIT 21 (LETTER TO MR. JAMES A. SPRINGS, JR.)	3861
RESPONDENT'S EXHIBIT 22 (LETTER TO MR. BOBBY L. MINTER)	3862
RESPONDENT'S EXHIBIT 23 (LETTER TO DR. DONNA SWARTZ-WATTS)	3863
RESPONDENT'S EXHIBIT 24 (LETTER TO DR. WILLIAM BRANNON)	3864
RESPONDENT'S EXHIBIT 25 (LETTER TO DR. GEOFFREY R. MCKEE)	3865
RESPONDENT'S EXHIBIT 26 (LETTER TO MS. PATTI RICKBURN)	3866
RESPONDENT'S EXHIBIT 27 (LETTER TO DR. DONNA SWARTZ WATTS DATED APRIL 12, 1999).....	3867
RESPONDENT'S EXHIBIT 28 (LETTER TO PERCY BEAU FORD, P.A. DATED DATED AUGUST 17, 1998).....	3868
RESPONDENT'S EXHIBIT 29 (LETTER TO MS. PATTI RICKBORN DATED APRIL 19, 1999).....	3869
RESPONDENT'S EXHIBIT 30 (MEMO TO DORCHESTER COUNTY DETENTION CENTER DATED APRIL 26, 1999).....	3870
RESPONDENT'S EXHIBIT 31 (LETTER TO DR. DONALD MORGAN DATED APRIL 26, 1999).....	3871
RESPONDENT'S EXHIBIT 32 (MEMO TO PERCY BEAU FORD DATED MAY 6, 1999).....	3872

RESPONDENT’S EXHIBIT 33 (MEMO REGARDING PRIVATE INVESTIGATOR).....	3873
RESPONDENT’S EXHIBIT 34 (AFFIDAVIT OF MR. B.J. JOHNS).....	3874
RESPONDENT’S EXHIBIT 35 (LETTER TO MR. JOHN E. WEIK DATED MAY 14, 1999).....	3875
APPLICANT’S PROPOSED FINAL ORDER.....	3876
PROPOSED ORDER OF DISMISSAL BY RESPONDENTS.....	3945
ORDER OF DISMISSAL	4023
APPLICANT’S 59(e) MOTION.....	4103
ORDER DENYING RULE 59(e) MOTION.....	4111

1 He feels that his son saved his
2 life. He states that he was in his room with a
3 loaded gun to his head and was not -- this was after
4 he had been fired from his job. And he states that
5 he received a phone call from his son, Daniel, and
6 that's what stopped him from killing himself.

7 Q. Could you say that with a reasonable
8 degree of forensic psychiatric certainty?

9 A. Yes.

10 Q. Dr. Schwartz-Watts, did you have the
11 occasion to read some of the other reports and the
12 other opinions and impressions by other doctors?

13 A. Yes. And I have been here through some
14 of the testimony of the other experts in this case as
15 well.

16 Q. And also what other documents, if
17 anything, have you used to come to your conclusions?

18 A. I've use the records from the Hall
19 Institute where he was hospitalized, I've used the
20 incident reports that were supplied to me, the
21 warrants, all the statements that were available
22 through your office. I've also seen the videotape of
23 the night, the evening he was arrested, and I've
24 reviewed the transcripts from those videotapes.

25 Q. Dr. Schwartz-Watts, is it your opinion

1 that at the time, April 30th, 1998, he was suffering
2 from this illness?

3 A. Absolutely.

4 Q. And how would you differ his illness from
5 schizotypal again?

6 A. Schizotypal is a very -- also a very
7 severe form of mental illness, but it's more your way
8 of relating to the world, that you always relate to
9 the world in a bizarre, odd fashion. Which certainly
10 sounds similar to Mr. Weik, but what the difference
11 is that Mr. Weik believes things that are not true,
12 he has delusional thinking. And he also has some
13 hallucinations that are much more severe than those
14 seen in schizotypal personality disorder.

15 The illness of schizophrenia is a
16 life-long illness, it does not go away once you
17 develop these symptoms. Some people do well with
18 medications and some people don't get better. And
19 the fact that as early as September 1997 he was
20 giving symptoms that were consistent with his illness
21 at that time. In my opinion he had a deterioration
22 in his functioning. Here was a man that had been
23 working, he had had a relationship with a woman.
24 Then in September he breaks off this relationship
25 with this woman because he believes she's corrupting

1 the church. He later, in December or January, loses
2 his job where he had been working for eight years.
3 And then as you heard his family members describe, he
4 became very reclusive, would stay in his room a lot.
5 And those are all symptoms that this illness was
6 active probably in September of 1997 and continuing
7 through.

8 Q. Dr. Schwartz-Watts, how long before these
9 symptoms will evolve or diminish in a person?

10 A. It depends on -- the form of
11 schizophrenia that Mr. Weik has, paranoid type,
12 that's one of the -- actually the more mild forms of
13 schizophrenia to have, although it can be very
14 severe. People with paranoid schizophrenia, they can
15 hold normal conversations, they can work, they can
16 look well. Unless you hit on the area where they
17 have fixed false beliefs you could easily miss the
18 diagnosis. So people with schizophrenia can function
19 well.

20 In Mr. Weik's case he has never been
21 seen by a psychiatrist, never seen by a psychologist
22 before any of these events, so there's really no
23 telling how long he's had this illness. And
24 unfortunately the longer you've had this illness if
25 you don't receive treatment, the more difficult it is

1 to treat it. Although out of all the schizophrenias
2 it's one of the more treatable forms.

3 Q. Would you say that some of the
4 information that he's given to various doctors, give
5 some doctors some, give some doctors a little bit
6 more, is it consistent with his illness?

7 A. Oh, yes. In Mr. Weik's case
8 psychiatrists call this well defended. Meaning that
9 at some level you recognize you're ill, but you're
10 able to explain every one of these symptoms, you're
11 able to rationalize them, you're able to try very
12 hard to appear well. And so at times it just depends
13 the stress he's under. If he's under a lot of stress
14 he may be a little bit more disclosing of his
15 symptoms because he's not able to devote as much of
16 his energy to looking well. So it depends on the
17 time, the circumstances, what stressors he's under at
18 the time, he could give different stories.

19 But consistently he says the same
20 things about these events that led up to him
21 murdering the victim in this case. He gives very
22 similar reports about voices, although he hasn't
23 always been forthcoming in how many he heard, exactly
24 what they were saying, but his symptoms in general
25 were being consistent in my opinion.

1 Q. His behavior when you visited him here at
2 the jail, was it one of aggression? What was his
3 behavior like?

4 A. No, not at all. Mr. Weik -- and I asked
5 him this and I also interviewed some of the detention
6 officers. The detention officers, the two that
7 worked up front, said that he was very pleasant and
8 got along well. He walked down the hall unescorted
9 by policemen into the interview room with me. I
10 interviewed him alone in this room, I've spent
11 probably ten hours total interviewing him and have
12 not had any detection that he was aggressive at all.

13 Q. Is there some medication out there that
14 you know that probably can help his situation?

15 A. There are many medications which could
16 help him. We're learning more about this illness
17 now, there's lots of new medications that are very
18 different from the old ones, like Thorazine. Many of
19 the new medications don't cause nearly all the side
20 effects that we used to see in people with these
21 forms of mental illnesses, so there are some
22 available.

23 Q. Did you know -- do you think that he can
24 adapt to a structured situation based upon what
25 you've seen at the jail?

1 A. In my opinion of Mr Weik it's more
2 important to know what he doesn't have. He's not a
3 sociopath, he does not have an antisocial personality
4 disorder.

5 Q. What are those things you just said?

6 A. This is a person that basically respects
7 rules and respects authority. If he's told to do
8 something he will do it until -- unless, now, if his
9 illness acts up he could have some occasional
10 difficulties, but this will be because of his illness
11 and not because of a disregard for authority.

12 So under structure we already know
13 ~~that~~ his illness, his symptoms are a little bit
14 better. In the jail he's been able to function okay
15 because he was able to stay awake at night and sleep
16 during the day, and he was able to adapt in some way
17 to the structure and function there. So he may would
18 have some difficulties in terms of his illness or
19 acting up if he was hallucinating, he might get
20 disorganized, but in terms of preying upon other
21 inmates, trying to hurt people, defying authority, I
22 don't think that's likely.

23 Q. No further questions.

24 CROSS-EXAMINATION

25 BY MR. BAILEY:

1 Q. Doctor, back on May the 18th you
2 testified in this matter, a non jury hearing; did you
3 not?

4 A. Yes, sir.

5 Q. On that occasion you stated that on
6 April 30th, 1998 Mr. Weik absolutely knew what he was
7 doing; did you not?

8 A. That's correct. And that's still my
9 opinion. I believe he knows right from wrong.

10 Q. Let me ask you this: I'm reading my
11 notes here, and you -- says since he wasn't treated
12 by a doctor there's no telling how long he had this
13 illness; is that correct?

14 A. That's correct. My suspicion is he
15 probably even had it during teenage years. But not
16 having any kind of medical documents to confirm that
17 or review, that's just based my history and what he's
18 told me.

19 Q. I thought you said it developed in
20 September 1997.

21 A. I can give a reason opinion as to that
22 date. His symptoms were clear, they met the criteria
23 from September. But my suspicion is he probably had
24 this illness long before this break in September.

25 Q. All right.

1 A. This was just one of the acute episodes
2 of it.

3 Q. And the symptoms of the illness are
4 hallucinations and delusions, as far as he's
5 concerned?

6 A. That's correct.

7 Q. Okay. Delusion is you believe something
8 against all logic?

9 A. You believe something even when you have
10 evidence to show that it may not be true.

11 Q. Okay.

12 A. And you continue, you can't even think
13 about another alternative explanation for something.

14 Q. Okay. Hallucination is you hear things,
15 see things that aren't there --

16 A. That's correct.

17 Q. -- is that correct?

18 Now, if they're not there, the only
19 way that you could know or believe that he did think
20 that he saw and heard these things, these auditory
21 and visual hallucinations would be, he would have to
22 tell you that, right?

23 A. That's correct. But we also know that of
24 the character of the voices. There's many people
25 that try to fake hearing voices and we know that

1 people with -- schizophrenics, the kinds of voices
2 that they hear, that his symptoms are consistent with
3 that. But that's correct, it's totally based on how
4 he describes them to us.

5 Q. And you described him as being guarded
6 and not forthcoming, which means he lies at times,
7 right?

8 A. No. To me that means he's protecting
9 something.

10 Q. Okay.

11 A. That he's very protective, he's very
12 suspicious, he doesn't know whether to trust someone
13 or not.

14 Q. And for that reason his story to you has
15 changed over time, hasn't it?

16 A. I wouldn't say changed, but I think more
17 details are given at times, that it built up. On the
18 first evaluation he described hallucinations. It
19 wasn't until a later point that he was able to say I
20 hear about eight voices, they say different things.

21 Q. Okay.

22 A. So I saw it more as him becoming a little
23 bit more forthcoming over time.

24 Q. All right. I believe you also said that
25 you saw him like, what, three time total; am I

1 correct?

2 A. Then including the different court
3 appearances, that's correct.

4 Q. Okay. But prior to court saw him three
5 times?

6 A. That's right.

7 Q. That each time you saw him he was getting
8 worse?

9 A. Yes.

10 Q. Okay. So his condition is progressing as
11 we go along. Today he would be much worse than he
12 was a year ago?

13 A. No, not necessarily. It depends on the
14 stressors that you're going through at that time, how
15 you perceive those stressors.

16 Q. Okay.

17 A. My opinion is I would have thought
18 through this proceeding he may or may not have gotten
19 worse, because it's certainly a stressful situation.
20 And being in court Thursday it seemed that he was
21 attending, so, again, it just depends on how
22 stressful he perceives circumstances.

23 Q. Were you in court Thursday when he
24 testified?

25 A. No. I was in court in the morning before

1 that period.

2 Q. You didn't see him testify?

3 A. No.

4 Q. Okay. Have you talked to anybody that
5 saw him testify?

6 A. Other than his attorneys. And I did
7 speak briefly with Dr. Crawford about her opinions
8 about that testimony.

9 Q. A report of how somebody testified would
10 be the type of information that you would use in
11 helping with the diagnosis, wouldn't it?

12 A. In my case confirming the diagnosis,
13 ~~that's correct.~~

14 Q. Were you told that Mr. Weik gave a
15 detailed factual account of where he tracked exactly
16 what happened from the time he left his mother's
17 house until he committed this murder?

18 A. I wasn't told that, but that's certainly
19 been my experience with him, he's been able to give a
20 very detailed account of that day.

21 Q. I thought you said that one of the
22 characteristics he had would be that he would be
23 incoherent, he would ramble?

24 A. That's when giving him unstructured
25 questions. If you ask him direct questions and he's

1 to answer them, he can do that pretty well. At times
2 if you ask open-ended questions and you allow him to
3 talk and you don't focus him, you don't structure
4 him, you can see that disorganization in his
5 thinking.

6 Q. Tell us about the eight voices that he
7 hears. Are they boys or girls, or men or women?

8 A. He states they're both men and women.

9 Q. Both. Names?

10 A. No. If they do, he hasn't told me them.

11 Q. Do different voices tell him different
12 things at different times, or what?

13 A. Basically I did not get into each voice,
14 what they said, what their meaning was. Generally
15 they comment on his behavior, they tell him things
16 like "watch out, they're after you, be careful," that
17 sort of thing.

18 Q. He never told you Susan Krasae was a CIA
19 agent, did he?

20 A. No, not that I ever heard.

21 Q. He times that you've appeared for the
22 State as the court -- or under a court order for
23 evaluation you've prepared a written report; have you
24 not?

25 A. Yes. That was part of my duty.

1 Q. Okay. Do you have a written report
2 today?

3 A. No. I was not asked to prepare a report.

4 Q. Okay. Is that unusual to do an
5 evaluation, not do a written report so that other
6 people could review it?

7 A. That's not been my experience when I have
8 been retained by the defense. My understanding is
9 that comes under lawyer/client privilege and that I'm
10 retained under that privilege, so certainly when I've
11 been asked I'm glad to do that.

12 Q. Okay. Let me ask you this: All the
13 information you got you got from Mr. Weik or the
14 defense attorneys; is that correct?

15 A. And I also interviewed his mother, I
16 spoke with his brother, and the Hall records.

17 Q. Did you speak to anybody outside of his
18 family, anybody in law enforcement, anybody with the
19 solicitor's office to get information that might be
20 helpful?

21 A. Yes. I spoke with the detention officers
22 in the jail on the occasions and I visited it as
23 well.

24 Q. Would you agree with me that opinions on
25 mental conditions are highly subjective?

1 A. I think our interpretation of symptoms
2 are highly objective. I believe the DSM-IV is pretty
3 good in outlining what criteria you have to have for
4 what illness. But I think you're correct, different
5 people can look at the same person in an interview
6 situation and see different things, I think that's
7 very possible.

8 Q. Different people that are just as
9 qualified, operating in good faith?

10 A. Absolutely.

11 Q. It's sort of an art and not a science?

12 A. A little of both I would like to think.

13 Q. Okay. And you may have one opinion and
14 some other doctor might have a different opinion, you
15 may both be right or both be wrong?

16 A. That's absolutely correct.

17 Q. What chemical did you say is present when
18 somebody's got schizophrenia?

19 A. Dopamine.

20 Q. How do you spell that?

21 A. D-o-p-a-m-i-n-e.

22 Q. Okay. Did Mr. Weik ever tell you he
23 heard crickets talking to him?

24 A. I have not had that history from him.

25 Q. Have you reviewed the report from the

1 state hospital, from Hall Institute?

2 A. Yes.

3 Q. Did you recall seeing in there where he
4 told them that he heard crickets?

5 A. I didn't recall that.

6 Q. You missed that?

7 A. No. I don't remember seeing that.

8 Q. All right. Would that be an example of
9 the hallucination?

10 A. I'm not really sure. I would have to ask
11 Mr. Weik and interview him about that to get more
12 details. But there's many kinds of people that hear
13 voices, sometimes they hear music, they can hear
14 bugs, that sort of thing. It depends.

15 Q. You said that you heard -- you saw the
16 videotape. Did you listen to the audiotape of the
17 second confession he gave to Tom Marshall?

18 A. Yes.

19 Q. And during that taped interview he was
20 not -- he was coherent, wasn't he, stayed on track?

21 A. In my opinion there were times where he
22 rambled on, but generally, yes, when he was asked
23 specific questions he was able to answer them.

24 Q. Are you saying, are you testifying here
25 that on Thursday, and I know you didn't hear him

1 testify, that Mr. Weik's thinking was disorganized?

2 A. No. I could give no opinion as to his
3 mental state on Thursday. What I did see and I
4 noticed is that he appeared to be listening to what
5 was happening in court and paying attention. I did
6 not talk with him that day, I did not interview him.

7 Q. Tell me how you can't give an opinion to
8 his medical state on Thursday, but you can give
9 opinion to his medical statement in September 1997?

10 A. Oh, that's absolutely.

11 Q. Tell them.

12 A. The difference is for the court we do
13 that all the time. You can assess somebody's present
14 ability to do a task, to pay attention, to pay bills,
15 that sort of thing. You need to see the person on
16 that day. Because, as you know, the way we function
17 changes from day to day, some days we're at our best
18 and there's other days that we don't always think and
19 act and feel the same way that we would on another
20 day.

21 What we're able to do in psychiatry,
22 when we know there's illness we have a lot of
23 research and a lot of clinical experience in knowing
24 that these illnesses, and specifically schizophrenia,
25 they don't go away. These are chronic illnesses,

1 they last a lifetime, they usually require treatment
2 over a lifetime. We know that these kind of
3 illnesses have their onset in people that usually --
4 when they are in their twenties. And the only thing
5 I can say with certainty is in September of 1997
6 Mr. Weik, all the symptoms that he described to me,
7 were consistent with someone suffering from paranoid
8 schizophrenia at that time.

9 Q. Based on symptoms he described to you?

10 A. Yes.

11 Q. All right. Now, you said there's
12 medication for schizophrenia?

13 A. Yes, sir.

14 Q. What kind of med -- what's the best
15 medication for somebody that's a schizophrenic?

16 A. There's two new ones that are really
17 good, I don't know which is the best. One is called
18 Risperidone, one is called Zyprexa. They're
19 basically antipsychotic medications, they decrease
20 the dopamine level in your brain so it organizes your
21 thinking a little bet better. People that take these
22 medications, sometimes the voices stop totally and
23 they're no longer bothered by voices.

24 Q. Which one did you prescribe Mr. Weik?

25 A. Probably either.

1 Q. Which one did you prescribe to him?

2 A. I offered him treatment and he refused
3 treatment.

4 Q. Okay. You didn't prescribe him anything,
5 did you?

6 A. No.

7 Q. Okay. But you're an M.D., you can write
8 a prescription?

9 A. Absolutely. But I can't make people take
10 them.

11 Q. Did you say a schizotypal disorder was a
12 very severe mental disorder?

13 A. I think it's a severe mental disorder.

14 Q. It's a personality disorder, isn't it?

15 A. Yes. And what -- personality disorders,
16 to me they're severe because they cause maladaptation
17 in the way that you function.

18 Q. That's a label you put on the way
19 somebody is, isn't it? It's a label you put on the
20 way somebody is?

21 A. It's a way of giving a label to somebody
22 that has maladaptive ways of functioning, that's
23 correct.

24 Q. I think you mentioned antisocial
25 personality disorder, that's somebody that doesn't

1 respect the rules of society, they steal, they hurt
2 people, they have no conscience, that type of thing?

3 A. That's correct.

4 Q. And somebody with a schizotypal
5 personality disorder is an odd, eccentric person; is
6 that correct?

7 A. That's correct. They can have bizarre
8 thinking at times, they can interpret things in
9 different ways, that's correct.

10 Q. Bizarre thinking like the hag, or
11 something like that?

12 A. Well, the hag maybe you could explain
13 with bizarre thinking, but in my opinion the
14 delusions involving the CIA, his special powers,
15 that's more than what's seen in schizotypal
16 personality.

17 Q. Okay.

18 A. That's psychotic.

19 Q. But you're not saying he saw that hag on
20 September 30th of last year?

21 A. He states that he began -- at that time
22 he was having bad dreams and he felt that this hag
23 visited him on a number of occasions, would paralyze
24 him, choke him, he couldn't move.

25 Q. Did he tell you that on April 30th of

1 last year that the hag paralyzed him and choked him?

2 A. No. He never gave that history.

3 Q. Thank you. That's all I have.

4 THE COURT: Anything else, Mr. Beauford?

5 MR. BEAUFORD: Just a few questions.

6 THE COURT: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. BEAUFORD:

9 Q. Dr. Schwartz-Watts, did Eddie ever tell
10 you why he don't take the medication?

11 A. He doesn't believe he's ill.

12 Q. And is that consistent with any
13 particular illness?

14 A. That's usually the number one battle
15 physicians face when treating someone with
16 schizophrenia, they don't have insight, they don't
17 recognize they're ill and it's very difficult to get
18 people to take medications when they don't think
19 there's anything wrong with them.

20 Q. No further questions.

21 THE COURT: Thank you, ma'am.

22 You may call your next witness.

23 MR. BEAUFORD: We would call Dr. Morgan.

24 (Donald W. Morgan, M.D., called as a
25 witness by the Defendant, having first

1 been duly sworn, was examined and
2 testified as follows:)

3 THE CLERK: Come around and have a seat,
4 please. Would you give us your full name and
5 spell your last name?

6 THE WITNESS: Donald William Morgan,
7 M-o-r-g-a-n.

8 DIRECT EXAMINATION

9 BY MR. BEAUFORD:

10 Q. Dr. Morgan, where do you live?

11 A. Blackstock, South Carolina.

12 Q. Tell me a little about your educational
13 background.

14 A. Well, I graduated from the University of
15 Pennsylvania with a degree, bachelor of arts, in
16 1956, I then went to medical school at the University
17 of Buffalo, I graduated in 1960. I then took a
18 rotating internship at Tripler Army Hospital in
19 Honolulu, Hawaii, for one year.

20 After that I went to Walter Reed
21 Army Medical Center where I took a residency in
22 general psychiatry, concluding that in 19 -- June of
23 1964. Following that, under Army sponsorship I went
24 to Donald State Medical Center and studied research
25 psychiatry, getting a degree of doctor of science in

1 1967. That's the end of my formal training.

2 Q. And what other training or experience
3 have you had since then?

4 A. What other experience? Following
5 graduating from Donald State Medical Center I
6 returned to Walter Reed Army Medical Center where I
7 worked both in research for a number of years, then
8 in training. And the last five years I was chief of
9 the Department of Psychiatry at Walter Reed Army
10 Medical Center.

11 I retired there in June of 1980 and
12 then I came to South Carolina, University of South
13 Carolina, and worked there until -- in fact, I still
14 do work there.

15 Q. Okay. When you came to the University of
16 South Carolina, was there a forensic psychiatry
17 department?

18 A. No, there was not.

19 Q. When was that developed?

20 A. Well, it became a requirement, forensic
21 training became a requirement in the general
22 psychiatry programs somewhere in the late '70s. And
23 that needed to be developed at our -- in our
24 residency here in South Carolina. And Dr. Donald,
25 knowing that I had forensic experience in the

1 military, asked me to develop a program for our
2 general residents.

3 Then in 1986 he asked me to develop
4 a program for the residency. And in those days it
5 was called a fellowship, but the correct term is
6 residency in forensic psychiatry. And that's a year
7 of training that the -- that you provide the
8 residents specifically in the issues of forensic
9 psychiatry.

10 Q. So are you saying that you developed the
11 forensic psychiatry department as we know at the
12 University of South Carolina?

13 A. Yes. I'm saying that I developed that
14 training program.

15 Q. Okay. And have you testified in court
16 before?

17 A. Yes, I have.

18 Q. Have you testified in capital cases
19 before?

20 A. Yes, I have.

21 Q. Have you testified in death penalty
22 cases?

23 A. Yes.

24 Q. Approximately how many times?

25 A. I had to figure that out a couple of

1 years ago. I would say at that time it was 13, so
2 probably 14 or 15 times.

3 Q. And you said you were chief psychiatrist?

4 A. At Walter Reed Army Medical Center the
5 last five years I ran the Department of Psychiatry
6 and was professor of psychiatry at the Uniformed
7 Services School of Medicine, and clinical professor
8 at Georgetown and Howard University.

9 MR. BEAUFORD: Your Honor, I would like
10 to offer him as an expert in the area of
11 forensic psychiatry.

12 MR. BAILEY: Without objection.

13 THE COURT: Without objection I find that
14 he's qualified as an expert in forensic
15 psychiatry.

16 BY MR. BEAUFORD:

17 Q. Dr. Morgan, how is it that you came to be
18 involved in this case?

19 A. Sometime in late April Dr. Schwartz-Watts
20 called me at my home and asked me whether or not I
21 would become involved, because Mr. Weik had related
22 to her that during the incident itself he had an
23 out-of-body experience. And she was unclear just
24 exactly what that would play to in terms of his
25 criminal responsibility, and whether or not an

1 out-of-body experience during the actual incident
2 would qualify for a defense of not guilty by reason
3 of insanity.

4 Q. So you came into this case. And did you
5 have opportunity to meet Mr. Weik?

6 A. Yes. I came down to St. George on the
7 29th. Unfortunately, Mr. Weik was back in Columbia,
8 so I really didn't get to see him until May 1st of
9 this year.

10 Q. And upon your seeing him, what was your
11 impressions of Mr. Weik at that time?

12 A. I asked Mr. Weik if he could tell me what
13 was happening on the date. The issue is what was he
14 experiencing on the day and the severity of his
15 dissociative episode. Because it's possible that a
16 dissociative episode could be a defense, could rise
17 to the level of not guilty by reason of insanity. So
18 I simply said to him, "Tell me what you were doing as
19 much as you can remember on the day of the incident."

20 He began telling me about his work
21 situation and what he did at work and that he had
22 been called into the office and told that he was
23 going to get a raise. And then he moved to a story
24 about his son, and his son and he and I think a
25 cousin going on a fishing trip. And this went on for

1 some 50 minutes and I couldn't follow most of it.
2 They got into a storm, the boat was sinking and
3 somehow he believes, he led me to think that he
4 somehow saved the son and the cousin, but they lost
5 all the equipment in the boat.

6 So after 50 minutes I asked him, I
7 said, "Mr. Weik, do you remember what I asked you?"

8 And he said, "No, I don't have any
9 idea what you asked me."

10 So then I said, "Well, let's start
11 over again." And then he gave me a version which is
12 very, very close to the version that he gave during
13 his statement when he was brought to the law
14 enforcement center. So that was most of the first
15 two-hour evaluation.

16 Q. Can you tell me about the next encounter
17 you had with Mr. Weik?

18 A. The next time?

19 Q. Yes.

20 A. The next time I saw Mr. Weik was here at
21 a hearing. I did not speak with him that day. We
22 were very concerned that he would incorporate the
23 doctors into his delusional system and then not
24 want -- not want to cooperate in any way with us. So
25 I did not speak to him that day, but I saw him

1 throughout the hearing.

2 Q. Did you have the opportunity to read
3 reports and different documents concerning Mr. Weik's
4 condition?

5 A. Different documents?

6 Q. Medical documents or reports.

7 A. Unfortunately, I've never had the
8 opportunity to go through either of the
9 hospitalizations that he had at the institute in any
10 detail. I have read portions of that, but not in the
11 kind of detail and the kind of study that one would
12 like to do, although we asked that they be
13 subpoenaed.

14 Q. Based on your visits with Mr. Weik, were
15 you able to come to any conclusions --

16 A. Well, the --

17 Q. -- about his condition?

18 A. The two days after the hearing I came
19 back down here and he was in the jail here, and I
20 asked him if -- what he understood was going on in
21 the hearing. And he said, well, the voices were
22 bothering him so that he had to constantly chant.
23 And part of his system is very religious and he read
24 the Bible, one specific paragraph in Isaiah over and
25 over again.

1 I asked him, because he had his
2 Bible with him in the interview room, I asked him if
3 he would show me that paragraph or -- and there was
4 no way that I could understand how that paragraph
5 related in any way to protecting him from his voices.

6 Also on that interview I asked him
7 about the hag. And he told me, in fact he started
8 with telling me about the girl Crystal, Crystal
9 Tomlin, and how that her relationship to him and to
10 the church he believed was the cause of this hag.
11 And I asked him, "Well, when's the last time that
12 this happened to you?"

13 He said, "Well, last time was in
14 April, or in March."

15 And I said, "Well, how do you keep
16 that from happening?"

17 He said, "Well, if I don't sleep at
18 nighttime and I take short naps during the day it
19 doesn't happen to me." So to me he has -- he works
20 at controlling his symptoms.

21 I asked him if he thought he had a
22 mental illness. And he really reacted very strongly,
23 saying that he didn't have a mental illness at all.
24 And then he proceeded to tell me how the government,
25 the CIA, and alcohol and firearms and tobacco people

1 had been following him and his family. One specific
2 incident the alcohol and firearms and tobacco people
3 came to his house because his father had assisted
4 someone in pawning a gun.

5 I asked his mother whether or not
6 that event happened. And, in fact, that did happen.
7 What the difference between that and what Mr. Weik
8 takes from that is that he knew that he was being
9 followed because the agents opened the back of their
10 trunk and they had a computer in there, and in that
11 computer somehow can track Mr. Weik.

12 And he also believes that his -- the
13 CIA is after his father and that his father was
14 dishonorably discharged from the Marines, when in
15 fact his father had a medical discharge from the
16 Marines under honorable conditions.

17 So these are things that show that
18 he takes a piece of information and twists it in his
19 mind so that he comes up with a system that helps him
20 understand why these voices, which are relatively
21 new, bother him.

22 Q. And based upon the information and the
23 interview that you gathered, do you have an opinion,
24 with a reasonable degree of forensic psychiatry
25 certainty, on his condition?

1 A. Yes, I do.

2 Q. What is that?

3 A. I think that he suffers from paranoid
4 schizophrenia.

5 Q. I'm going to ask you the same question:
6 What's the difference between paranoid schizophrenia
7 and schizotypal?

8 A. Well, over the years we have changed our
9 diagnostic criteria I personally think for the
10 better. In olden days, before 1980 anyway, there
11 was -- people believed that schizotypal personality
12 was a form of schizophrenia, it was on the same -- it
13 was on the same vector as schizophrenia, similar to
14 diabetes. Some people have problems with their
15 insulin regulation before they become -- before they
16 have full-blown diabetes.

17 We think about that differently now
18 because we have a different concept of what
19 schizophrenia is. We think schizophrenia is a brain
20 disease, that it has a hereditary component to it,
21 that it has many different forms, that some people
22 have it mildly, like some people have mild diabetes
23 and they can control it with diet, exercise. Some
24 people have a severe form of the illness just as
25 people with diabetes, some of them have severe and no

1 matter what they do they continue to have
2 complications.

3 And now we feel, or now people
4 believe that a schizotypal personality disorder is
5 more of a reaction to life, the way they were brought
6 up, their experiences in life as opposed to a
7 biological or chemically given illness, but that's
8 just telling you how people think today about that.

9 Q. During your interviews with Mr. Weik,
10 what was his behavior? Was he aggressive? What was
11 the behavior like?

12 A. Mr. Weik wasn't aggressive. His behavior
13 was -- when I get into the issues of what -- one of
14 the questions I asked is what should be done, what do
15 you thin -- how should all this turn out? He became
16 very loud. He said, "Justice must be done. An eye
17 for an eye and a tooth for a tooth, that's what the
18 Bible says, that's the Mosaic law." And then began
19 to laugh, you know, very forced, inappropriate
20 laughter. But he was never -- he was never in any
21 way aggressive.

22 Q. Do you feel that there's medication out
23 there that may help him?

24 A. There's a lot of medicines out there that
25 may help him. I tried to convince him that he should

1 take some medicine. And the answer was the body is a
2 temple of God and we can't put any medicines into it.
3 The only medicine that he's willing to take is
4 melatonin, which he buys over the counter for his
5 sleep disorder, so since he's not ill he's not going
6 to take any medicine. But there's a lot of treatment
7 that he could have over and above just medicine.

8 Q. When you talked to him, did he pretty
9 much follow directions, when you had the interview
10 with him?

11 A. Well, once you structure him he can
12 respond appropriately, so on a direct question and
13 answer he does quite well. If you ask him, tell me
14 about -- like tell me about the date of the incident,
15 then he became very loose, very tangential. Loose, I
16 mean his thoughts didn't follow one on the other, and
17 tangential means that he started telling me about a
18 boating accident that had nothing to do with the
19 incident of the day.

20 Q. Is it your opinion he suffered from this
21 condition on April 30th, 1998?

22 A. Yes. When he told me about the incident
23 itself he told me that they had -- he and his -- and
24 the victim had an argument, that he had gone over to
25 see his son, Daniel, ~~that they~~ had an argument and

1 she told him "you're not going to see him anymore."
2 And she had -- "and if you don't leave right now I'm
3 going to call the police and have you taken away."

4 So he went, got in his truck, began
5 to drive. And then he said he had a hitting on the
6 back of his head and the voices began telling him
7 that he might as well kill himself, that he's
8 worthless, that he can't even raise his son, that he
9 can't manage the situation at all.

10 And about that time he had this
11 out-of-body experience, he no longer is in control.
12 In fact, he said kind of quizzically, "I don't know.
13 I must have backed that truck up, but I don't
14 remember doing that." And he said then the voices
15 continued. And he saw himself as if he were watching
16 himself on TV. And that's an out-of-body experience.
17 He then said he took the gun and then he described
18 the incident as he described -- as he did to the
19 police that same night.

20 He said he got back in the car and
21 that's when justice must be done -- served, justice
22 must be done, and he sped towards the -- where I
23 think he was going to the police to turn himself in.

24 Q. Okay. No further questions, Dr. Morgan.

25 CROSS-EXAMINATION

1 BY MR. BAILEY:

2 Q. Dr. Morgan, when Mr. Weik gave you this
3 account of the story, did he happen to tell you that
4 at about four o'clock p.m. on that same day when he
5 left work he told his employer or his boss, Ron Hall,
6 that "I'm going over to my son's house to straighten
7 something out, if you don't see me tomorrow you'll
8 know something happened"? Do you recall that part of
9 it?

10 A. I don't recall that, but I do recall it
11 in Mr. Hall's statement.

12 Q. Okay. And he wasn't saying he had this
13 out-of-body experience at that point in time, did he?

14 A. No.

15 Q. And when he went home, and did he tell
16 you that he kissed his mother goodbye, told her he
17 loved her before he drove off in the truck?

18 A. No. He told me that his mother asked him
19 whether he wanted something to eat and that he was
20 not hungry, that he called his son, that his son had
21 had some -- was to see the principal or the vice
22 principal. And he said to his son that his son had
23 to choose between Mr. Weik and the boyfriend of the
24 victim who Mr. Weik felt was trying to keep him from
25 his son.

1 Q. Did he tell you he was having an
2 out-of-body experience when he had this conversation
3 with his son?

4 A. Absolutely not.

5 Q. All right, sir. So whatever he told
6 Mr. Hall, that was him talking. That was him
7 talking --

8 A. Yes.

9 Q. -- that wasn't any out-of-body person?

10 A. No, sir.

11 Q. When he went home and called his son, no
12 out-of-body problem there?

13 A. No, sir.

14 Q. When he drove his truck from Moncks
15 Corner to Knightsville, no out-of-the-body stuff at
16 that point in time?

17 A. No.

18 Q. All right, sir. You didn't have the
19 advantage this jury had Thursday in listening to
20 Mr. Weik's complete account of what occurred that
21 day, did you?

22 A. No, I did not.

23 Q. All right, sir. Have you listened to the
24 tape of the confession he gave to Tom Marshall?

25 A. Yes.

1 Q. Have you listened to and seen the
2 videotape of the stop alongside the road and read the
3 transcript there?

4 A. Yes.

5 Q. Now, he doesn't say anything at all, does
6 he, Doctor, in those accounts about any kind of a
7 feeling of hitting in the back of his head and the
8 voices telling him he's worthless, does he?

9 A. He does mention the voices towards the
10 end of the statement to the investigator.

11 Q. Okay.

12 A. That was cut off. He started to say the
13 voices and then the investigator asked another
14 question. He does also there shout "forced entry,
15 lethal weapon."

16 Q. Did you read his handwritten statement?

17 A. No. I think I read the typed statement.

18 Q. This is in his handwriting here. "I was
19 saying to myself 'I think so, 25 years life or death
20 isn't so long.'" Is there anything in there about
21 any kind of out-of-body experience?

22 A. Yes, it does.

23 Q. Where is that?

24 A. "It felt like I was watching myself from
25 above and from the side."

1 Q. Okay. All right, sir.

2 A. That's three lines from the bottom.

3 Q. I want to ask about that, bear with me
4 one second.

5 (Pause in proceedings.)

6 Isn't it true, Doctor, that at some
7 point in their lives about half of all adults
8 experience brief episodes of depersonalization?

9 A. I don't know about a half.

10 Q. Are you familiar with DSM?

11 A. People under stress clearly have
12 out-of-body experiences, but I don't know about half.

13 Q. And an out-of-body experience when you're
14 under stress, if it's not a recurrent, persistent
15 thing is a normal human experience; isn't it?

16 A. It is an experience and certainly does
17 not in this particular case reach to the level of
18 having someone not responsible for his behavior.

19 Q. All right. So if somebody is in combat
20 or they're under a very stressful situation, they're
21 in a serious car wreck, they would have a temporary
22 depersonalization experience that would be a normal
23 experience; wouldn't it?

24 A. Yes. And many people do.

25 Q. And would committing an act of murder be

1 such an experience?

2 A. Yeah, I think that's true.

3 Q. All right, sir. Let me ask you this,

4 Doctor: Your opinion that you're giving for this

5 jury today is no better than the information that you

6 garner to reach that opinion, you're applying your

7 education, your knowledge to the facts of this case

8 as you perceive those facts to be, correct?

9 A. Given the experience that I've had.

10 Q. All right, sir.

11 A. And the background that I have and the

12 numbers of times I've done these things.

13 Q. Okay.

14 A. Yes, that's all it is.

15 Q. If you get faulty information pertaining

16 to a particular patient or a particular individual,

17 then your opinion may be faulty; is that correct?

18 A. Certainly.

19 Q. All right, sir. Now, when you were at

20 the Hall Institute you were the head psychiatrist

21 there for a period of years; were you not?

22 A. No.

23 Q. You were not?

24 A. No. No.

25 Q. I'm sorry.

1 A. I was the interim director twice.

2 Q. Okay.

3 A. After Dr. Donald resigned and while they
4 were searching for the new chairman, and then after
5 Dr. Faulkner resigned and they were searching for the
6 new chairman.

7 Q. You've worked there as a psychiatrist at
8 the Hall Institute and done court-ordered
9 evaluations?

10 A. Oh, yes.

11 Q. And on each of those occasions a person
12 sent to the Hall Institute under a court order goes
13 through a process where information's gathered on
14 that person and made available to the psychologist
15 and psychiatrist at the Hall Institute; is that
16 correct?

17 A. Yes.

18 Q. And you have never rendered an opinion
19 pursuant to a court order on a mental evaluation
20 without reviewing all the information that's gathered
21 during that information gathering process, have you?

22 A. I don't know about all or never. I'm
23 sure I have never -- I've gone to court and not read
24 every nurse's note, so, no, not --

25 Q. Let me ask you this: The social worker,

1 he finds people that are familiar with the family,
2 you know, family members, friends, husbands, wives,
3 people like that that give him information that he
4 puts in a social history.

5 A. Social workers generally have one
6 informant.

7 Q. All right, sir. And the only reason a
8 social worker gathers that information is so the
9 phycologist and psychiatrist can use that to help
10 form their diagnosis, isn't it?

11 A. Yes.

12 Q. When you were at the Hall Institute,
13 didn't you always read that social worker's report?

14 A. Yes.

15 Q. And a social worker did do a report in
16 this case, Mr. Torres, I think; is that correct?

17 A. He -- I think Carlos filled out the
18 social history. And I believe the informant was the
19 defendant's mother.

20 Q. Did you read the social history?

21 A. Not in detail, sir.

22 Q. It's only about seven pages long, isn't
23 it?

24 A. I've only had access to that record
25 briefly during the Blair hearing.

1 Q. Yes, sir.

2 A. And then briefly today. So, no, I have
3 not read that record as I should have.

4 Q. Okay. You would agree that record might
5 provide important information, might help you give a
6 better opinion?

7 A. Yes, absolutely.

8 Q. That's why you wanted to read it?

9 A. Yes, that's right.

10 Q. Bear with me a second, Doctor.

11 (Pause in proceedings.)

12 You testified that you were hired by
13 the defense to explore whether or not a not guilty by
14 reason of insanity defense would be appropriate; were
15 you not? That's how you originally got into this
16 thing?

17 A. I originally got into this by
18 Dr. Schwartz-Watts calling me at home, asking me
19 would I become involved. Because the question was
20 whether or not this out-of-body experience or
21 dissociative reaction, as you called it, would raise
22 to a level that they would have a plea, a reasonable
23 plea of not guilty by reason of insanity. That's why
24 when I first saw Mr. Weik I asked him, "Tell me about
25 the day that the incident happened."

1 Q. Okay. And did you say he was or was not
2 able to do that with you?

3 A. Well, I don't think that raised to the
4 level that would make him not responsible for his
5 behavior.

6 Q. All right, sir. And you've had exactly
7 two interviews with Mr. Weik; have you not?

8 A. Well, actually I spent two, two-hour
9 interviews with him and then one-hour interview here
10 along with Dr. Behrmann, Dr. Shea, Dr.
11 Schwartz-Watts, and from time to time in that
12 interview his lawyers.

13 Q. Has he been consistent with you in his
14 report of these voices and the hag and that kind of
15 thing?

16 A. The voices he's been consistent on. I
17 really hadn't had time in only four hours to do any
18 kind of in-depth look at whether or not he's
19 consistent with the voices.

20 Q. Thank you, Doctor.

21 THE COURT: Anything else, Mr. Beauford?

22 MR. BEAUFORD: No further questions, Your
23 Honor..

24 THE COURT: Thank you, sir.

25 MR. BAILEY: Dr. Schwartz-Watts said she

1 wants to be excused, I have no objection.

2 THE COURT: No problem if you all --

3 MR. BEAUFORD: No objection.

4 THE COURT: That's fine.

5 MR. BEAUFORD: And Dr. Morgan.

6 THE COURT: Yes. Thank you very much.

7 MR. BEAUFORD: Your Honor, that is the
8 defendant's case.

9 THE COURT: All right. Anything in
10 reply?

11 MR. BAILEY: Yes, sir. Call Stephen
12 Shea.

13 THE COURT: Put your left hand on the
14 Bible, raise your right.

15 (Stephen J. Shea, Ph.D., called as a
16 witness by the State, having first been
17 duly sworn, was examined and testified as
18 follows:)

19 DIRECT EXAMINATION

20 BY MR. BAILEY:

21 Q. State your full name, please.

22 A. My name is Stephen John Shea, last name
23 is spelled S-h-e-a.

24 Q. Your educational background?

25 A. I went to college at Rutgers University

1 and got a bachelor's degree in psychology, I then
2 started at the University of South Carolina in 1979
3 in clinical and community psychology. I graduated
4 from USC with my doctorate in clinical and community
5 psychology in 1989.

6 In 1985 and 1986 I did an AP
7 approved internship in clinical psychology at the VA
8 Regional Medical Center in Honolulu, Hawaii, and I'm
9 currently licensed to practice psychology in the
10 state of South Carolina as a clinical psychologist.

11 Q. All right, sir. What's your present
12 employment and your duties in that position?

13 A. My present employment is that I am the
14 chief psychologist for the forensic division of the
15 William S. Hall Psychiatric Institute, and along with
16 that I am an assistant professor in neuropsychiatry
17 at the University of South Carolina.

18 Q. What does the Hall Institute do?

19 A. The Hall Institute is the teaching and
20 education hospital for the Department of Mental
21 Health. And in our division, in the forensic
22 division, what we do is we provide mental health
23 services to people in county jails. And the biggest
24 part of our job is that we do court-ordered
25 evaluations, that is we answer questions about

1 people's mental status that are posed by the courts,
2 things like are they competent to stand trial, do
3 they meet the test for the insanity defense, do they
4 have a mental illness that reduces their capacity to
5 conform their behavior to the law, things like that.

6 Q. All right, sir. Have you testified in
7 the past as an expert in the field of forensic
8 psychology?

9 A. Yes, I have.

10 Q. Approximately how many occasions?

11 A. About -- I've never sat down and added
12 them all up, probably close to 50 with maybe another
13 75 criminal matters in the family courts.

14 Q. All right, sir. Are you board certified?

15 A. No, I'm not.

16 MR. BAILEY: Your Honor, I would tender
17 Dr. Shea as an expert in the field of forensic
18 psychology.

19 THE COURT: Any questions of Dr. Shea?

20 MR. BEAUFORD: No, sir.

21 THE COURT: Forensic psychology I find
22 he's qualified and I'll allow him to give an
23 opinion.

24 BY MR. BAILEY:

25 Q. Dr. Shea, you testified that your unit,

1 your forensic unit, did court-ordered evaluations; is
2 that correct?

3 A. That's correct.

4 Q. And did the forensic unit do a
5 court-ordered evaluation of the defendant in this
6 case, Mr. Weik?

7 A. Yes, we did.

8 Q. All right, sir. And did you participate
9 in that evaluation?

10 A. Yes, I did.

11 Q. What is the extent of participation of
12 the forensic psychologist as opposed to the
13 psychiatrist?

14 A. I'll explain the whole procedure. What
15 we do is we use a team approach to evaluate cases
16 with serious charges such as this. The forensic
17 psychiatrist is the managing member of that team,
18 they're in charge of the team, they chair the
19 treatment team and they preside over the staffing or
20 evaluation that we do.

21 In cases like this a defendant would
22 come in and they would be evaluated by a number of
23 different disciplines. They'll get a physical
24 examination the same way any of us would get a
25 physical exam, from a doctor. They will see a

1 neurologist to check for neurological disease,
2 they'll go and have an EEG and an MRI, have pictures
3 taken of their brain and those reports will be sent
4 back.

5 A social worker will talk to the
6 patient and talk to the patient's family, to jail
7 staff, to police, to whomever they feel like they
8 need to contact to get a social history.

9 The psychologist will do diagnostic
10 interviews for the presence or absence of a mental
11 disorder and also perform psychological tests to find
12 out if there's any problems with thinking, or if any
13 of the psychological testing is consistent with
14 mental disorder.

15 The forensic psychiatrists do an
16 independent evaluation, they do diagnostic interviews
17 and physical evaluations to see if there's the
18 presence of a mental disease, or whether or not
19 there's any other medical diseases that might be
20 relevant.

21 At the end, typically in cases like
22 this, the psychiatrist and the psychologist will get
23 together and go over with the defendant information
24 that is relevant to whatever we're asked to look at
25 in the court order. More people may be involved.

1 Sometimes the social worker's involved or the
2 attorneys or whoever, but it's typically the
3 psychiatrist presiding and the psychologist as the
4 second examiner.

5 Q. All right, sir. In Mr. Weik's case did
6 you perform some psychological tests on him?

7 A. Yes, I did.

8 Q. Was one of them an IQ test of some type?

9 A. Yes, it was.

10 Q. What type of IQ test did you give?

11 A. I would have used the Wechsler Adult
12 Intelligence Scale, it's the standard test. And I
13 used the new revision of it. It was the third
14 edition of that test.

15 Q. All right, sir. And how did he score on
16 that?

17 A. His IQ was in the average range.

18 Q. All right, sir. Now, any other
19 information that you talked about that you gathered,
20 did you review that information before you reached
21 any kind of conclusion or opinion?

22 A. Yes, I did.

23 Q. With respect to the MRI, was that a
24 negative or positive MRI?

25 A. According to my notes a -- I don't have

1 it written down here. My recollection is that the
2 MRI report was a normal MRI.

3 Q. All right, sir. And based on the
4 available information to you, was there a
5 neurological consultation that was done?

6 A. Yes, there was.

7 Q. All right. Was any problem found there?

8 A. I believe that Dr. Bellini (phonetic)
9 found that there was no neurologic disease.

10 Q. All right. Any psychiatrist history on
11 Mr. Weik, either inpatient or outpatient to your
12 knowledge?

13 A. He indicated to us and we were not able
14 to find that he had ever been evaluated or treated on
15 an inpatient or outpatient basis.

16 Q. Was there any history of drug or alcohol
17 abuse?

18 A. Not that we could find. Mr. Weik claims
19 that alcohol and drugs are against his religious
20 beliefs. And when we talked to his family they said
21 that they didn't know him to have a problem with
22 drugs or alcohol, either.

23 Q. Any history of any serious suicide
24 attempts prior to 1998?

25 A. At some points he denied past suicide

1 attempts, other times he reported past suicide
2 attempts. We were never able to get that there was
3 an actual attempt, although he said that there were
4 times when he intended to, but I don't think he
5 actually acted on his thoughts.

6 Q. So based on the social history, did he
7 come from an intact family?

8 A. His parents were married, are married,
9 yes.

10 Q. Did he reach normal developmental
11 milestones as a child?

12 A. The social history indicated that his
13 mother said that he reached -- he developed normally
14 as a child, yes.

15 Q. And did they report any kind of childhood
16 behavioral problems?

17 A. No, they did not.

18 Q. Any history of head trauma or head injury
19 reported?

20 A. I don't recall what they said on the MRI.
21 I have in my notes that he had a motor vehicle
22 accident in the 1980s where he went to the emergency
23 room, and that there was another auto accident in
24 1992. During one of those he went -- he actually
25 went through a window of a truck by the report that I

1 have, but that while he was at the scene he asked the
2 police to help him, help his brother who was also in
3 the car.

4 Q. All right, sir. Any history of physical
5 sexual abuse?

6 A. He denied those.

7 Q. And his educational level?

8 A. He quit high school in the 11th grade.

9 Q. And did he have a steady employment
10 history?

11 A. Yes, he did. Yes, he did. He was
12 employed for eight years at Broyhill. He reported
13 good adjustment there. He got into an altercation
14 with a foreman where he threatened the foreman and
15 was terminated. And after that he took another job
16 working on -- doing fiberglass work, building of I
17 believe boat hulls. He was employed there up until
18 the time of his arrest.

19 Q. Did he report any outside interests,
20 hobbies, activities, that kind of thing?

21 A. He's a hunter, he's a fisherman, he's
22 active in his church and he reported that he was
23 active in some activities with his son in recent
24 years.

25 Q. All right, sir. Any abnormal speech

1 patterns, involuntary movements, things of that
2 nature?

3 A. His movement was normal. His speech was
4 fast at times. He would go off on tangents, very
5 overly elaborate, much more information than is
6 necessary to answer the question. And on top of that
7 he often goes off on tangents from there.

8 Q. Was he oriented to person, place, and
9 time?

10 A. Yes, he was.

11 Q. What was his general affect, his
12 presentation to you when you had your interviews with
13 him?

14 A. He's affect varied. His affect refers to
15 how he presents his mood or emotions. The first time
16 I saw him he was irritable and somewhat hostile, he
17 didn't want to be evaluated, it was his first time in
18 a psychiatric hospital and he didn't want to be
19 there.

20 He was discharged from our facility,
21 essentially didn't want to cooperate with the
22 evaluation and was discharged, and after that was
23 brought back on an outpatient basis. At that point
24 his affect was mostly anxious. He was cooperative,
25 he was very, very nervous, he was polite, he was

1 cooperative.

2 Q. Is that unusual with somebody facing the
3 situation he was in, to be nervous?

4 A. It's not unusual. He was -- his
5 presentation was a little bit more nervous than we
6 see, but being nervous is not unusual for this
7 situation.

8 Q. What about his thought processes, your
9 impression of them during the interviews?

10 A. His thoughts were logical. His speech
11 was coherent in that he didn't ramble incoherently.
12 His thoughts were expressed -- he was able to answer
13 questions. Although, again, his answers were over --
14 too much information, overly elaborate and would go
15 off on tangents.

16 Q. How much time did you spend face to face
17 with Mr. Weik in forensic interviews total, roughly?

18 A. Before the start of all these hearings a
19 little over 13 hours, 13 1/2, possibly as much as 14
20 hours.

21 Q. Did his presentation change during that
22 13 hours, 14 hours?

23 A. Yes, it did.

24 Q. Okay. Could you tell the jury in what
25 way?

1 A. The first time I saw him he was, again,
2 angry and irritable and just not wanting to be in the
3 hospital. He had -- he was just irritated having to
4 be there at all. After that his presentation was
5 nervous, but cooperative. On other times he was a
6 lot more suspicious or guarded. I'd say the most --
7 the thing that carried across I think was the
8 anxiety.

9 Q. All right, sir. And did you discuss
10 Mr. Weik's situation with any other -- who was the
11 psychiatrist assigned to the case initially?

12 A. The initial psychiatrist assigned to the
13 case was Dr. Thomas Behrmann, he was our chief -- he
14 was in charge of the forensic division and he was the
15 psychiatrist assigned to this case.

16 Q. And did he move away?

17 A. Yes, he did.

18 Q. Who took over as the psychiatrist in that
19 case?

20 A. Dr. Pam Crawford.

21 Q. And did you confer with Dr. Crawford as
22 well as other people at the Hall Institute forensic
23 unit before you all reached any kind of conclusion on
24 your evaluation?

25 A. Yes, I did. Mr. Weik, again, during that

1 first admission he really didn't want to participate.
2 We got a social history because we were getting that
3 from other people, we gathered information, but we
4 didn't get a whole lot from Mr. Weik. We brought him
5 back for outpatient evaluation and saw him a few
6 times as an outpatient and then eventually brought
7 him back for an inpatient. And for all that
8 Dr. Crawford was involved in the case so she and I
9 essentially have been working on the case together
10 since we were able to start working with Mr. Weik.

11 Q. Okay. Did Mr. Weik allege any auditory
12 or visual hallucinations?

13 A. Yes, he did.

14 Q. Tell us what he told you in regard to any
15 alleged hallucinations he was having.

16 A. On the first evaluation he stated that he
17 was having auditory hallucinations of crickets,
18 hearing crickets. He told the medical student that
19 on admission. And during that admission he wouldn't
20 talk to me because he didn't want to be in the
21 hospital, he didn't want to participate.

22 On the second time we spoke to him
23 he talked about having auditory hallucinations of two
24 voices conversing with each other. And he could not
25 describe the content, he couldn't -- he couldn't tell

1 us what -- couldn't tell me what they were talking
2 about or any of the quality of the voices, whether
3 they were male voices, female voices, loud, soft,
4 whatever. I.e., he said he didn't know whether they
5 were voices that he was hearing in his head, like
6 thoughts, or outside as if I were talking or someone
7 was talking that he couldn't see. He was very vague
8 in that description.

9 He also described a visual
10 hallucination of the hag that comes at night and
11 would hold him down. And at that point he told me he
12 couldn't describe -- he didn't -- he said he saw
13 this, but he really couldn't describe it because he
14 never got a good look.

15 Q. Okay. Did he tell you when he saw this
16 hag?

17 A. Yes, he did. He said that he had been
18 seeing it for a period of months.

19 Q. Okay.

20 A. If I could clarify. Those -- by the time
21 we saw him last, the description of the auditory and
22 visual hallucinations had changed again to eight
23 voices and, again, a description of the hag.

24 Q. How many times, Doctor, did the
25 descriptions of the hallucinations change, how many

1 different stories did you get from him about the
2 voices?

3 A. I got three main versions. I'm sorry, I
4 got two main versions. And there was that initial
5 hospitalization where he didn't talk about them, the
6 voices.

7 Q. Okay. So he started off with crickets,
8 then two voices. And what was the next one?

9 A. Eight voices.

10 Q. Eight voices, all right. And this hag,
11 when would he see the hag?

12 A. He described it to us as something he
13 would see at night, either just before falling asleep
14 or something he would see as he woke up. He
15 described it as something that woke him up, that this
16 was some phenomenon or some creature that would
17 actually wake him out of that sleep.

18 Q. Is there a name of those type
19 experiences, when you go to sleep and waking up?

20 A. Yes, there is.

21 Q. What is it?

22 A. Those are hypnogogic phenomenon.

23 Q. Are those considered normal experiences?

24 A. They're not normal in that we have them
25 every day, but normal people have them. I mean, most

1 people have experiences with that state, sort of
2 between awake and a dream where you're not really
3 sure if you're awake or dreaming, or you may hear
4 something or see something just before you go to
5 sleep or just as you wake up that you later realize
6 wasn't real.

7 Q. Okay. Dr. Shea, what is a personality
8 disorder?

9 A. A personality disorder is a life-long
10 pattern of problems that a person has with their
11 thinking, their feeling, and their relation to other
12 people.

13 Q. And did you diagnose a personality
14 disorder, or concur in a diagnosis that Dr. Crawford
15 had on a particular personality disorder for
16 doctor -- for Mr. Weik?

17 A. I diagnosed a personality disorder, a
18 schizotypal personality disorder.

19 Q. Tell the jury, if you could sort of in
20 layman's terms, what a schizotypal personality
21 disorder is.

22 A. Schizotypal personality is someone who
23 has a life-long pattern of just being somewhat odd or
24 eccentric. A person who may not take things the same
25 way as other people, who has some odd beliefs and an

1 odd way of presenting themselves. Someone who's
2 speech is, you know, a little strange or overly
3 elaborate, who sometimes has displays of emotion that
4 are inappropriate or different than what most of us
5 have. They may have experiences where they believe
6 in magical thinking or odd experience, like thinking
7 that they can tell the future or that their dreams
8 tell the future. That they tend to be fairly
9 suspicious of other people, may border on paranoia.

10 Q. If they were rich, would you call them
11 eccentric?

12 A. That's pretty typical, yes.

13 Q. Okay. And if they're not, then you'd
14 call them schizotypal personality disorder?

15 A. Well, I guess I would call them
16 schizotypal either way, but it's a person who --
17 these are people who have a lot of trouble getting
18 along with other folks because they have trouble
19 getting their point across.

20 Q. And a that's label you put on them to
21 describe their behavior and their way of looking at
22 the world?

23 A. Yes, it is.

24 Q. That they're odd people?

25 A. They're odd, but they're also -- there's

1 more to it than that. They misperceive things, they
2 take things the wrong way, they're overly suspicious.
3 It's a label to describe all these things that occur
4 together, sort of a shorthand way of talking about
5 people who do this whole cluster of things.

6 Q. I may have asked you this, but is a
7 schizotypal personality disorder considered a major
8 mental condition?

9 A. It's not considered a major mental
10 illness, but somebody with a personality disorder
11 like this tends to have a lot of problems.

12 Q. What diagnostic criteria did you use in
13 Mr. Weik's case to make that diagnosis of schizotypal
14 personality disorder?

15 A. He had most of the characteristics of a
16 schizotypal personality disorder. If I could refer
17 to my report rather than speaking off the top of my
18 head.

19 Q. Yes, sir.

20 A. And I'll just read from my report. I
21 said that in general Mr. Weik's presentation is
22 consistent with a person who has schizotypal
23 personality disorder. "This patient has a pattern of
24 social and interpersonal problems as well as
25 cognitive distortions and odd behavior that have been

1 present throughout his life. Mr. Weik is socially
2 anxious and appears to have few close friends outside
3 of his family, his behavior is odd at times. His
4 affect was observed to be inappropriate at various
5 times during the evaluation. He was overly
6 suspicious and non-bizarre paranoid ideation is
7 present. Odd thinking was also present as evidenced
8 by speech that was vague, circumstantial, and
9 overelaborate. Odd beliefs and unusual perceptual
10 experiences were also reported."

11 Q. All right, sir. Were you present
12 Thursday when Mr. Weik testified?

13 A. Yes, I was.

14 Q. And did that help you out any as far as
15 reaching any conclusions about his mental status?

16 A. It was consistent with what I already
17 believed.

18 Q. All right, sir. And what is
19 depersonalization?

20 A. Depersonalization is feeling like you are
21 outside of yourself, or that something that you've
22 experienced is not really happening to you.

23 Q. All right, sir. During your work
24 experience have you worked with the Department of
25 Corrections?

1 A. Yes, I have.

2 Q. In what capacity?

3 A. I was a staff psychologist, later I was a
4 unit director for mentally ill inmates, I became
5 chief psychologist shortly before I transferred to
6 the Hall Institute.

7 Q. Approximately how many convicted
8 murderers did you speak with or counsel with in the
9 Department of Corrections?

10 A. Convicted murderers, hundreds.

11 Q. Hundreds, all right, sir.

12 A. Perhaps.

13 Q. And did you discuss the facts of the
14 crimes with them on occasion?

15 A. Not all of them. I've had contact with
16 hundreds, perhaps over 1,000 inmates, you know, over
17 the time.

18 Q. Is a depersonalization sensation, is that
19 unusual for someone to experience that in a stressful
20 situation based on experience?

21 A. Not at all. A lot of people have that
22 experience.

23 Q. All right, sir. And you have heard
24 Mr. Weik testify, you've heard the tapes, have you
25 not, of the confessions?

1 A. Yes.

2 Q. All right, sir. And the way he relates
3 of what occurred of seeing himself on a monitor and
4 all that, is that an unusual situation with someone
5 who's committing an act of murder?

6 A. That's not at all unusual for people to
7 describe crimes that way. A lot of murder or, you
8 know, any other offenses people often say, you know,
9 felt like it wasn't even me doing it, it felt like I
10 was watching the situation. The same way you hear
11 people talking about auto accidents, I felt like it
12 was happening in slow motion, I felt like I could see
13 it happening from outside. That's a very common way
14 for people to describe crimes they've committed.

15 Q. All right, sir. With respect to
16 Mr. Weik's capacity to conform his conduct to the
17 requirements of the law on April 30th, 1998, do you
18 have an opinion to a reasonable degree of scientific
19 certainty?

20 A. Yes, I do.

21 Q. What is that opinion?

22 A. My opinion is that he did not have a
23 mental disease or defect that would have prevented
24 him from conforming his behavior to the requirements
25 of the law.

1 Q. All right, sir. Did you rule out, did
2 you consider and rule out Mr. Weik suffering from
3 paranoid schizophrenia?

4 A. Yes, I did.

5 Q. All right, sir. What diagnostic criteria
6 did you consider and rule out in this situation?

7 A. I considered -- there were so many odd
8 reports, we looked at that very carefully. I had the
9 most difficulty ruling out or in these
10 hallucinations. I questioned him extensively about
11 the issue of hearing voices or seeing things. And
12 under very, very particular questioning Mr. Weik
13 described these as experiences that typically
14 happened at night when he was about to fall asleep or
15 waking up, and especially the visual hallucinations.

16 On top of that I asked specifically
17 if there was any way that the voices were related to
18 what happened that day. And he said, "No." Or any
19 way that the hag was related that day and he said,
20 "No."

21 Q. So he says the hag and the voices, if he
22 heard them or saw them at times, did not control his
23 actions on April the 30th, 1998?

24 A. That's what he told me, yes.

25 Q. Doctor, based on your work within the

1 prison system and based on the personality makeup of
2 Mr. Weik, do you have an opinion as to his
3 adaptability to a prison environment, how he would
4 adapt compared to other inmates?

5 A. I did not do a complete evaluation for
6 that, but I have an opinion about that just -- you
7 know, about how I think he would do once he got in
8 prison.

9 Q. What is that opinion?

10 MR. BEAUFORD: I'm going to object to
11 that if he said he hasn't prepared that.

12 THE COURT: Well, I don't know that it's
13 required that he do a full test. The question
14 is do you have a basis. Do you have a basis
15 upon which to rely and if -- I don't want you
16 to answer, I don't want you to give the
17 opinion unless you can give the basis. You
18 don't have to give the basis first. I know
19 the solicitor's going to ask you that. The
20 point of it is if you have an opinion you may
21 give it provided you can tell me now that you
22 have a basis upon which to base that opinion.

23 THE WITNESS: I believe I have a basis.

24 THE COURT: All right, sir. I'll allow
25 it.

1 BY MR. BAILEY:

2 Q. All right, sir. First of all, what is
3 your opinion, then what's the basis of that opinion?

4 A. Overall -- I think that Mr. Weik will
5 have some problems in prison, but overall he would be
6 able to adjust if placed in a prison. The basis for
7 that is my diagnostic interviews with Mr. Weik, my
8 knowledge of the Department of Corrections and their
9 policies, procedures, and clientele, and my reading
10 of the -- at least part of his jail records.

11 Q. All right, sir. And compared with what I
12 guess the best thing to characterize would be the
13 average inmate, would he have more or less difficulty
14 adjusting?

15 MR. BEAUFORD: Objection.

16 THE COURT: Hold it just one minute now.

17 (Pause in proceedings.)

18 THE COURT: I sustain the objection.

19 BY MR. BAILEY:

20 Q. Doctor Shea, please answer any questions
21 the defense may have for you.

22 CROSS-EXAMINATION

23 BY MR. BEAUFORD:

24 Q. Dr. Shea, you testified that you
25 personally spent four hours interviewing Mr. Weik?

1 A. No. I probably spent about between 13
2 and 14 hours.

3 Q. Oh, excuse me. That's what you said, 14.
4 And Dr. Behrmann did the initial -- some initial
5 assessment of Mr. Weik?

6 A. Dr. Behrmann would have seen him during
7 his first admission and he also saw him for a
8 staffing with Dr. Crawford and I.

9 Q. And you had the opportunity to read
10 Dr. Behrmann's notes?

11 A. I had the opportunity to read the -- I'm
12 trying to think if I saw a report from Dr. Behrmann
13 or not. I don't recall right off the top of my head.
14 I've seen materials that Dr. Behrmann provided, but
15 I'm not remembering what they are right off the top
16 of my head.

17 Q. In those report that Dr. Behrmann had, he
18 had the impression that Eddie suffers from
19 schizophrenia?

20 A. I don't recall that. If you could show
21 me or tell me where that is I could find it in the
22 records.

23 Q. Okay. Do you feel that Eddie is
24 malingering?

25 A. I wouldn't call it malingering. He tends

1 to be a little bit overdramatic in trying to make
2 people understand that there's a reason for what he
3 did, but I wouldn't call it an out and out
4 malingerer.

5 Q. You testified also about
6 depersonalization. And many people suffer from that
7 condition; is that correct?

8 A. I wouldn't call it suffering from --
9 people have that experience when they're under
10 stress, I wouldn't call it suffering from a
11 condition.

12 Q. And in your study those individuals
13 that -- you know, that had that experience, do they
14 rationalize and say they can't control it, when
15 they're in a car accident do they make those kind of
16 statements when they're describing they can't control
17 it?

18 A. People in car accidents don't. People
19 who describe crimes to me very often say that they
20 couldn't control it. That varies.

21 Q. And that's in the depersonalization
22 experience?

23 A. It tends to be a way people describe
24 experiences that they just -- they're not consistent
25 with the view of themselves. They've done something

1 that they think is out of character for themselves or
2 that has shocked them in some major way and that's
3 typically how they describe it when they're talking
4 about it.

5 Q. Basically schizotypal and schizophrenia,
6 the one major thing that you look for is whether
7 there is the delusion there; am I correct?

8 A. You will look for that in schizophrenia.
9 And out and out bizarre delusions are typically not
10 present in schizotypal personality.

11 Q. If you had a person that was schizotypal
12 and you added delusions to those same laundry list,
13 would they be schizophrenic?

14 A. Depends whether or not they were bizarre
15 delusions. That paranoia is one of the
16 characteristics of schizotypal personality, they are
17 suspicious of other people and they may have some
18 ideas that, you know, folks are watching them or out
19 to get them. But with schizophrenics the delusions
20 tend to be more bizarre and all controlling.

21 Q. And were you aware in your conversation
22 with Eddie that when he -- when you said his story
23 changed, when you said he was finally able to see the
24 hag, it was while he was in jail after he had left
25 you?

1 A. He by the -- I'm not sure that he was
2 saying that now that he had left us he was able to
3 finally see the hag. I believe that he was finally
4 talking to us about this, or giving us detail. I'm
5 not sure what it was. I just know it was a change.

6 Q. Let me clarify that. When you saw
7 Mr. Weik and he gave you one account and said he
8 couldn't see the hag, did you subsequently later ask
9 him if he ever had any more experiences with this hag
10 situation?

11 A. I asked him again, I got information that
12 Dr. Schwartz-Watts and Dr. Morgan thought he was
13 psychotic so we, you know, went back and looked at
14 this some more and asked him again.

15 Q. Were you here in one of the hearings in
16 which Mr. Weik testified and vividly described at
17 what point he was able to see the hag?

18 A. Yes, I was.

19 Q. And was that after one of the encounters
20 that you had with him where he was unable to see the
21 hag?

22 A. No. That was -- the telling me that he
23 was not able to see or describe the hag was before
24 that hearing.

25 Q. And the time in which -- that account,

1 did it change, what he actually saw, or just added to
2 it? You said he changed the story.

3 A. The story at that point he added to it.
4 The story changed in minor ways, but I would say it
5 was just adding to it.

6 Q. But you do agree that he suffered from
7 some disorder?

8 A. I believe he had schizotypal personality
9 disorder, yes.

10 Q. Okay.

11 MR. BEAUFORD: Just one minute, Your
12 Honor.

13 (Pause in proceedings.)

14 MR. BEAUFORD: No further questions.

15 THE COURT: Anything else?

16 MR. BAILEY: No redirect, Your Honor.

17 The State --

18 THE COURT: Are you all okay?

19 MR. BAILEY: One final witness,

20 Dr. Crawford.

21 THE COURT: Yes, sir.

22 (Pamela M. Crawford, M.D., called as a
23 witness by the State, having first been
24 duly sworn, was examined and testified as
25 follows:)

1 THE CLERK: Come around, have a seat.

2 Would you give us your full name, spell your
3 last name?

4 THE WITNESS: Pamela M. Crawford,
5 C-r-a-w-f-o-r-d.

6 DIRECT EXAMINATION

7 BY MR. BAILEY:

8 Q. What is your profession, Dr. Crawford?

9 A. I'm a forensic psychiatrist.

10 Q. What is your educational background?

11 A. I was educated -- I went to Emory College
12 and graduated from Emory College in 1983. I
13 graduated from Emory School of Medicine in 1988, I
14 Completed a residency in psychiatry at Emory in 1992.

15 Q. Okay. And your employment background?

16 A. My employment background. After leaving
17 residency I was active duty in the United States Air
18 Force as a psychiatrist for three years at Travis Air
19 Force Base. Following leaving active duty I was the
20 assistant clinical director at Georgia Mental Health
21 Institution, a 250-bed psychiatric hospital. I then
22 left there and came to Columbia. I'm currently the
23 acting director of the forensic services at William
24 S. Hall Psychiatric Institute.

25 Q. Okay. You're licensed in South Carolina

1 as a physician, M.D.?

2 A. Yes, I am.

3 Q. Are you board certified in general
4 psychiatry?

5 A. Yes, I am.

6 Q. Are you board certified in forensic
7 psychiatry?

8 A. Yes, I am.

9 Q. Have you testified in the past as an
10 expert in the field of forensic psychiatry?

11 A. Yes, I have.

12 Q. On approximately how many occasions?

13 A. In the state of South Carolina
14 approximately ten times.

15 Q. What about elsewhere, Georgia, the
16 military?

17 A. Ten to 15 times.

18 MR. BAILEY: Your Honor, I would tender
19 Dr. Crawford as an expert in forensic
20 psychiatry.

21 MR. BEAUFORD: No objection.

22 THE COURT: All right. Forensic
23 psychiatry now, I find she's qualified.

24 MR. BAILEY: Thank you, Your Honor.

25 BY MR. BAILEY:

1 Q. Doctor, pursuant to an order of this
2 court dated December 16th, 1998, did you participate
3 in Mr. Weik's forensic evaluation at the Hall
4 Institute?

5 A. Yes, I did.

6 Q. All right. You took over from
7 Dr. Behrmann, is that correct, when he left the
8 state?

9 A. That's correct.

10 Q. And you were assisted by a staff as
11 Dr. Shea testified?

12 A. Yes.

13 Q. And just possibly to shorten your
14 testimony up, you were present when Dr. Shea
15 testified right before you in court, right?

16 A. Yes.

17 Q. You heard his testimony?

18 A. Yes.

19 Q. Okay. Did you confer with Dr. Behrmann
20 in regard to Mr. Weik's case when he turned him over
21 to you?

22 A. Yes, I did.

23 Q. And subsequent?

24 A. Yes, I have conferred with him.

25 Q. Okay. And what written material have you

1 reviewed prior to making any kind of a conclusion or
2 opinion in this case in regard to Mr. Weik's mental
3 status?

4 A. I reviewed the incident reports that were
5 provided, the warrants, I reviewed the audiotape, the
6 written transcripts of his confession and statements,
7 and I reviewed psychological testing that was
8 performed, I reviewed the information from an MRI
9 that we did from a neurological --

10 Q. What's an MRI? We've mentioned that
11 before, what is that?

12 A. That's a brain scan essentially, an exam.

13 Q. Was that normal?

14 A. That was normal. And I reviewed
15 laboratory data that we obtained, urine/drug screen.

16 Q. Was that normal?

17 A. That was normal.

18 Q. Okay.

19 A. I reviewed the social history provided by
20 the social worker and --

21 Q. Was that something that you would -- in
22 your position, would need to do in order to reach any
23 kind of an opinion or conclusion?

24 A. I think it's a very important piece.

25 Q. All right go ahead. I'm sorry.

1 A. That's okay. I also reviewed Dr. McKee's
2 summary of his findings.

3 Q. Okay. And would you state whether or not
4 you have spoke within Mr. Weik's attorneys,
5 Mr. Beauford?

6 A. Yes, I have.

7 Q. All right. And have you spoke with
8 family members of Mr. Weik?

9 A. Yes. I've spoken with his mother.

10 Q. Have you had the opportunity to observe
11 Mr. Weik testifying in court?

12 A. Yes, I have.

13 Q. Have you had an opportunity to observe
14 him just being present in court on several occasions?

15 A. Yes, I have.

16 Q. When other people were testifying?

17 A. Yes.

18 Q. Were you here Thursday and observed
19 Mr. Weik testifying --

20 A. Yes, I did.

21 Q. -- in this case?

22 How much face-to-face time during
23 forensic interviews have you had with Mr. Weik,
24 approximately?

25 A. Approximately face-to-face about six

1 hours.

2 Q. Okay. And is that in conjunction -- is
3 part of that in conjunction with what Dr. Shea did,
4 or is that separate?

5 A. In conjunction with him as well as on my
6 own.

7 Q. Okay. What's your estimate of Mr. Weik's
8 intelligence?

9 A. What's my estimate? He's of average
10 intelligence.

11 Q. And do you have an opinion on whether or
12 not Mr. Weik has a personality disorder?

13 A. I believe he does have a personality
14 disorder.

15 Q. Okay. And what personality disorder do
16 you believe he has?

17 A. Schizotypal personality disorder.

18 Q. Okay. What is your -- we've heard about
19 that. What's your definition of a schizotypal
20 personality disorder?

21 A. A personality disorder as we've talked
22 about is a developmental disorder, something that's
23 been present throughout the lifetime of a person
24 that's very rigid and changes very little over time.
25 The salient features of his personality disorder are

1 that he appears very odd and eccentric, that he is
2 paranoid at times, that he misinterprets things in a
3 way that other people would not, that he has odd
4 beliefs, that at times he may think things refer to
5 him when they really don't. He has a very different
6 way of looking at the world.

7 Q. Would you consider a personality disorder
8 a major mental disease?

9 A. I don't consider it a major mental
10 disease as schizophrenia. I think it can be a very
11 impairing problem.

12 Q. And with respect -- specifically with
13 respect to Mr. Weik, what characteristics that were
14 made available to you led you to give him this
15 diagnosis of schizotypal personality disorder?

16 A. He is very odd in the way he relates to
17 people. He has a history of not having a lot of
18 involvement with people, of kind of keeping his
19 distance, not having a lot of close relationships.
20 He often thinks things refer to him when they don't,
21 he overinterprets things, like he'll hear someone
22 laughing in the next room and think perhaps they're
23 laughing about him. He heard me walking by, my heels
24 were clicking on the floor and he thought that I was
25 trying to distract him on purpose. He

1 overpersonalizes things.

2 He has religious beliefs that are
3 held by a lot of people. He has certain beliefs that
4 I think are not typical of most religious beliefs,
5 such as the belief in the hag and what that may mean,
6 although there are some subgroups that do believe in
7 that.

8 He -- his speech is odd at times,
9 he's, what I would say, is overinclusive, he talks
10 about more information than you've asked him, he kind
11 of rambles at times. I think those are the major
12 features.

13 Q. And in terms of impairment, how would a
14 personality disorder such as you've described compare
15 with a psychotic condition like paranoid
16 schizophrenia?

17 A. In a psychotic condition like paranoid
18 schizophrenia I think we would be expecting to see
19 much more deterioration in his functioning. I think
20 one of the things that's been pretty important about
21 my evaluation of him is that even though things may
22 change, stories may change a little bit, he looks
23 consistent over a time. I mean, each time I see him
24 he's still odd in the same kind of way. And it seems
25 from talking with other people that he's always been

1 kind of odd, there has not been some major
2 deterioration that you typically see with somebody
3 with a psychosis.

4 Q. You've heard his testimony Thursday,
5 you've listened to the tapes, reviewed the
6 transcripts, business about the monitor, seeing
7 himself apart from his body. Do you consider that
8 depersonalization experience any sign of any mental
9 illness or infirmity?

10 A. I don't see it as that. I see it as a
11 fairly common reaction to an extremely stressful
12 situation.

13 Q. Okay. Did you rule out paranoid
14 schizophrenia? I think you've answered this in so
15 many words, but did you consider it, evaluate it, and
16 rule it out in your opinion?

17 A. I have ruled it out. I have spent a lot
18 of time exploring that issue.

19 Q. Okay. And specifically what diagnostic
20 criteria that you would have to have for paranoid
21 schizophrenia or psychotic condition does Mr. Weik
22 not have?

23 A. I do not believe that the false beliefs
24 he has go to the level of delusions. I think he has
25 odd beliefs that are shared by his family, but I have

1 not been able to see it reach the level of delusion.

2 He also does not have the second
3 major criteria of schizophrenia which is a
4 deterioration in function. This man has been able,
5 even with these odd beliefs he's had for years, to
6 maintain a level of functioning. And that
7 deterioration has to be present in order for someone
8 to be a paranoid schizophrenic.

9 Q. Okay. Did you, during the course of all
10 the interviews you had with Mr. Weik, ask him whether
11 or not he was experiencing any hallucinations or
12 delusions when he murdered Susan Krasae on April
13 30th, 1998?

14 A. I asked him if he was experiencing any
15 hallucination. He told me that he heard voices prior
16 to shooting her when he was in his car. He said the
17 voices stopped after he got out of the car and walked
18 towards her house. There were no other voices that
19 he told me of at that time, there were no other
20 visual hallucinations or delusions that were involved
21 in this specific episode.

22 Q. Okay. And in your opinion, to a
23 reasonable degree of medical certainty, did those
24 voices he heard cause him not to know right from
25 wrong?

1 A. No, I don't think that they did.

2 Q. Did it prevent him from being able to
3 conform his conduct to the requirements of the law;
4 in other words, to stop from going in there and
5 committing this act of murder?

6 A. I don't believe so.

7 Q. That's all I have. Please answer any
8 questions the defense might have for you.

9 CROSS-EXAMINATION

10 BY MR. BEAUFORD:

11 Q. Just a couple of questions, Dr. Crawford.

12 A. Okay.

13 Q. You testified earlier that one of the
14 things that you didn't see in Eddie was deterioration
15 in function.

16 A. Right.

17 Q. And isn't it basically true that
18 sometimes people with schizophrenia sometimes find
19 something to -- lack of better word -- to prevent
20 that situation from arising, whether it might be
21 singing or putting earphones on to drown the noises
22 out, different things of that nature?

23 A. When I mean deterioration in function,
24 what I mean is the inability to work, I mean function
25 overall. There are things people do to drown out

1 voices, what I mean is deterioration over time, like
2 not being able to work, not being able to participate
3 in one's church, not being able to relate to one's
4 family, that's what I mean when I -- that's the
5 deterioration I didn't see.

6 Q. Approximately how many times did you
7 spend with Eddie?

8 A. How many times?

9 Q. Not how much, how many different?

10 A. Many, many times. He was on my inpatient
11 service. The times I cited in my report were the
12 times I sat face to face with him. I saw him either
13 at a distance or, you know, briefly every day that he
14 was in the hospital. And I've seen him each day that
15 he's here, I've seen him a lot of times.

16 Q. Was he polite?

17 A. Very.

18 Q. And he never gave you any problem?

19 A. Never gave me any problem.

20 Q. Do you think that he could adapt to
21 prison life?

22 A. When you asked me that, I'm aware that
23 there's a formal way of evaluating that and I have
24 not done such a formal evaluation. I mean, if you
25 would like me sort of off the top of my head to tell

1 you do I think he would adjust I can tell you about
2 that, but I did not do a formal evaluation.

3 Q. Off the top of your head tell me.

4 A. Off the top of my head I think that he
5 would adjust to prison.

6 Q. Thank you.

7 THE COURT: Anything else?

8 MR. BAILEY: No, sir. Nothing else.

9 THE COURT: Thank you, ma'am.

10 State's case?

11 MR. BAILEY: That's the State's case.

12 THE COURT: Ladies and gentlemen, I'm
13 going to ask you now to take a break. We've
14 got a good bit of work we've got to do here.
15 It's ten to 4:00 and I've got a few minutes
16 that I've got to talk to these lawyers and so
17 forth.

18 You've heard the evidence you're
19 going to hear in the case, so now the only
20 thing that remains, really, are the lawyers'
21 statements to you, arguments, my charge on the
22 law and that's it. So give me a minute or two
23 and let me see what I can do, I'll bring you
24 back as quickly as I can.

25 (Jury excused.)

1 THE COURT: All right. I assume then
2 from the defendant's standpoint all motions
3 that he's made before and so forth you renew
4 at this point in time? I'm not trying to do
5 your job for you, but obviously you want to
6 renew all motions, if there are any?

7 MR. BEAUFORD: Yes, Your Honor.

8 THE COURT: All right. Let me ask you
9 all a couple of things if you don't mind.
10 First of all, in preparing these -- this --
11 well, let me talk to Mr. Weik first. Let me
12 talk to him first.

13 Mr. Weik, let me ask you again,
14 sir -- you don't need to stand up -- do you
15 want to make a closing statement to the jury?

16 MR. WEIK: Yes, sir. Yes, sir.

17 THE COURT: You want to talk to the jury?

18 MR. WEIK: Yes, sir.

19 THE COURT: You've got the right to do
20 that.

21 MR. WEIK: Yes, sir. I understand.

22 THE COURT: When your lawyer finishes his
23 statement you have the right to stand and talk
24 to the jury as well.

25 MR. BEAUFORD: Your Honor, Mr. Weik

1 agreed that he would make his closing first
2 and I'll be the last one.

3 THE COURT: If that's what you want to
4 do. It's up to you, Mr. Weik. You tell me
5 what you want to do.

6 MR. WEIK: Doesn't matter, sir. Fine
7 with me.

8 THE COURT: Well, it's totally up to you.
9 Do you want your lawyer to go first as he says
10 and you go -- I mean, you go first and he goes
11 last?

12 MR. WEIK: Common courtesy.

13 THE COURT: Sir?

14 MR. WEIK: Common courtesy, sir.

15 THE COURT: Common courtesy?

16 MR. WEIK: Yes, sir. Doesn't bother me.
17 He can go first, I can go first, either one.

18 THE COURT: The whole point of it is
19 whatever you want to do is fine. If that's
20 the way you all designed it, that's not a
21 problem.

22 MR. BAILEY: Your Honor, I don't want to
23 interrupt Mr. Weik during his closing
24 statement, but I would ask the Court to
25 admonish him not to get into anything that's

1 not already in evidence.

2 THE COURT: Well, that's going to be a
3 little hard to do. Of course, it's hard to do
4 for any defendant.

5 Mr. Weik, let me just tell you about
6 that, please, sir, if you don't mind. What it
7 is, you certainly have the right to talk to
8 the jury, to talk to them about anything
9 that's been testified to during the course of
10 this trial. What you can't do is talk about
11 things that aren't -- that haven't been heard
12 here in the court. You see where I'm coming
13 from? You can't talk to them about the fact
14 that you taught Sunday school five years ago,
15 for instance. I don't know whether you did or
16 not, but you can't talk about the fact that
17 you taught Sunday school five years ago
18 because nobody said you did in the courtroom
19 here.

20 Anything's that's been testified to
21 that would help you in any way you certainly
22 have the right to talk to the jury about that,
23 but you can't testify again. All you can do
24 now is talk to the jury about what they've
25 heard. You're bound now by our rules to

1 exactly what it is that's in evidence at this
2 time. Do you follow where I'm coming from?

3 MR. WEIK: Somewhat. Yes, sir.

4 THE COURT: I want to ask you all a
5 couple other things to make sure. First of
6 all, I have -- am going to submit as the two
7 aggravating circumstances what I've already
8 ruled on, burglary in the first degree which
9 I'm going to recharge, physical torture which
10 I'm going to obviously charge for the first
11 time.

12 As to the statutory mitigating
13 circumstances -- Mr. Beauford, you all listen
14 to this now, let me ask you about this. The
15 defendant has no significant history of prior
16 criminal conviction involving the use of
17 violence against another person. No one has
18 ever said a word about any kind of a record
19 that he has of any kind at all. And certainly
20 to me that would be a mitigating circumstance
21 that I should give to the jury. You all agree
22 with that, don't you?

23 MS. HARDEE-THOMAS: Yes, Your Honor.

24 MR. BEAUFORD: Yes, Your Honor, defense
25 would agree.

1 **THE COURT:** The second one says this:

2 The murder was committed while the defendant
3 was under the influence of mental or emotional
4 disturbance. And that's the very thing you
5 all have been talking about all day and I'll
6 give that one to the jury.

7 **MR. BEAUFORD:** Yes, sir.

8 **THE COURT:** Three and four certainly
9 would not apply and five would not apply.
10 Number six, let me ask you about that. The
11 capacity of the defendant to appreciate the
12 criminality of his conduct or to conform his
13 conduct to the requirements of law was
14 substantially impaired.

15 Now, I haven't heard anybody except
16 for those for the State say he did not have,
17 but I hadn't heard anybody on your side of the
18 coin say that he could not appreciate the
19 criminality of his conduct. Just the opposite
20 is what I've heard.

21 **MR. BAILEY:** Your Honor, I think there's
22 some case law that says if there's any
23 evidence of a personality disorder, which
24 there is --

25 **THE COURT:** Then I should submit that.

1 MR. BAILEY: Two, six, and seven have to
2 be charged if they want it charged.

3 THE COURT: All right. All right. Do
4 you all want me to charge that then?

5 MR. BEAUFORD: Yes, Your Honor.

6 THE COURT: And number seven, the age or
7 mentality of the defendant at the time of the
8 crime.

9 MR. BEAUFORD: Yes, Your Honor.

10 THE COURT: All right. Now, are there
11 any other? The only other ones, of course,
12 are the defendant was provoked by the victim
13 in committing the murder, the defendant was
14 below the age of 18 at the time of the crime,
15 the defendant had mental retardation, which
16 would of course not apply. I assume that
17 that's what you went then, is one, two, six,
18 and seven?

19 MR. BEAUFORD: Yes, those listed.

20 THE COURT: And any other. And by my
21 saying any other, I actually have a sentence
22 on the bottom of that form which says, "And
23 any other non statutory mitigating
24 circumstance." Which means that, of course,
25 when you argue to the jury whatever it is that

1 you want to argue, his adaptability to prison
2 life, for instance, or whatever else you want
3 to argue, those would be included in that
4 sentence of any other non statutory mitigating
5 circumstances. Is that -- is that -- am I
6 satisfying you all in there with that?

7 MR. BEAUFORD: Yes, Your Honor.

8 THE COURT: All right, sir. In addition
9 to that, I would -- I'm going to charge
10 obviously the law in regards to experts again,
11 I'm going to charge the law in regard to
12 confessions. I know I've already done that,
13 but I need to charge that again because the
14 State -- jury may consider, and would have to
15 consider, I suppose, his confession or his
16 statement as to the aggravating circumstance
17 of burglary, for instance.

18 I'm going to charge the fact that he
19 does not testify at this stage in the trial
20 cannot and must not be held against him and so
21 forth, that he simply has nothing to prove,
22 that the State has the burden of proof beyond
23 a reasonable doubt in that regard. Is there
24 anything else that either one of you can think
25 of that I...?

1 MR. BEAUFORD: Yes, Your Honor. I would
2 like you to instruct the jury that if they
3 find aggravating circumstances they can still
4 vote for life.

5 THE COURT: I will certainly do all of
6 that. I just failed to even mention any of
7 that. What I intend to tell the jury is that
8 the State has the burden of proving at least
9 one aggravating circumstance beyond a
10 reasonable doubt. May prove two, but it must
11 prove one beyond a reasonable doubt. And even
12 if it proves that one, or both, that the jury
13 in spite of that can still give a death -- I
14 mean, a life sentence, that the jury is never
15 required to give a death sentence under any
16 circumstances.

17 And then I intend to tell them, of
18 course, that the jury must find an aggravating
19 circumstance if it intends to -- in other
20 words, if the jury is going to sentence this
21 defendant, the only way the law permits the
22 jury to sentence this defendant is if it finds
23 an aggravating circumstance. If does not find
24 an aggravating circumstance, then their
25 deliberations would end at that point and they

1 would not be required to sentence the
2 defendant, that would be left to me, of
3 course. Any problem with the way I handle
4 that?

5 MR. BEAUFORD: Nothing with that. In
6 addition, Your Honor, I ask that the Court
7 instruct the jury that life mean life without
8 parole.

9 THE COURT: All right, sir.

10 MR. BAILEY: Your Honor, I have seen your
11 general charge and I'm not sure what torture
12 charge you're going to use. I've got the
13 State versus Davis charge here, and I gave a
14 copy to the defense.

15 THE COURT: All right, sir. If you've
16 got one, I think I've got it.

17 MR. BAILEY: Also I've got a charge
18 pursuant to California versus Brown, State
19 versus Bell in the no sympathy charge.

20 THE COURT: All right.

21 MR. BAILEY: Hand them up to the Court.

22 THE COURT: No problem with that. Thank
23 you.

24 MR. BAILEY: Your Honor, I had also made
25 a pretrial motion sometime back that was

1 deferred, I guess, until now to prohibit
2 anybody, the State or defense, from getting
3 into religious arguments as part of the
4 closing argument.

5 THE COURT: Yes, sir. And I believe, if
6 I'm not mistaken, the case that I presided on
7 in Lexington County, State versus Patterson,
8 is the one -- if I'm not mistaken, that was
9 the one where I precluded either side from
10 speaking about religion and the Supreme Court
11 said that I was within my discretion to do so.

12 MR. BAILEY: Yes, sir.

13 THE COURT: So there won't be any
14 religious argument now, either side.

15 Now let me ask you about this,
16 because you did tell me that you were going to
17 argue, I thought, earlier in the week future
18 dangerousness or the -- and so --

19 MR. BAILEY: Yes, sir.

20 THE COURT: And tell me what you're going
21 to base that argument on.

22 MR. BAILEY: Your Honor, I'm going to
23 base that argument on the only way you can
24 predict somebody's future behavior, really, is
25 based on their past conduct and it's -- I've

1 given up a lot to be able to make that
2 argument because they wouldn't even need to
3 know there was life without parole if I wasn't
4 going to do it.

5 THE COURT: I know it.

6 MR. BAILEY: That would be my argument.

7 THE COURT: I knew that you had. I
8 guess -- I guess the problem that I've got is
9 the fact that you've got two psychiatrists,
10 psychologist and psychiatrists who come along
11 and now says he can adapt to prison.

12 MR. BAILEY: That's a different issue
13 than future dangerousness, though, I would
14 contend.

15 THE COURT: I understand it is. In a way
16 it is, and in a way, of course, it's not. And
17 in a way it's -- it all sort of conjoins
18 together.

19 MR. BEAUFORD: Your Honor, again, I
20 argued this differently. Basically his expert
21 has -- I would say has said differently.
22 There's been no evidence that would suggest he
23 has been dangerous while he's in prison or any
24 other scenario, so basically he's making a
25 blanket argument without any evidence to

1 support it.

2 THE COURT: Let me think about that one a
3 minute or two.

4 Let me ask you all this now. Of
5 course, you know, sometimes you try to be so
6 careful and you read cases, State versus
7 Victor is the case which says on the record
8 the defendant must be given an opportunity to
9 waive, give up any of those statutory
10 mitigating circumstances which we just went
11 over, four of them.

12 I don't know whether that means you
13 as the defendant's attorney, or the defendant
14 himself. You all have told me that you want
15 me to charge and to give the statutory -- four
16 statutory mitigating circumstances. What does
17 Mr. Weik say about that?

18 Mr. Weik, there are four mitigating
19 circumstances, there are four things. Let me
20 talk to you in plain English. There are four
21 things that I can tell the jury, and intend to
22 tell the jury, that they could consider, among
23 other things, but there are four that the law
24 specifically says they can consider in
25 deciding to give you a life sentence.

1 One of those is -- one of those
2 things is that you don't have a history of any
3 criminal activity, that you don't have any
4 criminal convictions for violence. And I
5 intend to tell the jury that they could
6 consider the fact that you don't have a
7 criminal history, any conviction. Do you want
8 me to tell them that?

9 MR. WEIK: Yes, sir. If you don't mind,
10 please.

11 THE COURT: All right, sir. I'll do it.

12 MR. WEIK: I appreciate it.

13 THE COURT: I'll do it. You're entitled
14 to it.

15 MR. WEIK: Okay, sir.

16 THE COURT: What about the second one,
17 that the murder was committed while you were
18 under the influence of mental or emotional
19 disturbance?

20 (Pause in proceedings.)

21 THE COURT: In other words, what I intend
22 to do is to simply tell the jury that they may
23 consider the evidence that when the murder was
24 committed that you were under the influence of
25 mental or emotional disturbance. If they want

1 to consider it, fine; if they don't, fine, but
2 I intend to tell them that if you tell me
3 that's what you want me to do. What do you
4 think about that, Mr. Weik?

5 MR. WEIK: Explain that, sir, please.

6 THE COURT: All right, sir. What I will
7 do is I will tell the jury that they can
8 consider the fact that when the crime was
9 committed that you were suffering an emotional
10 disturbance, or you were suffering a mental
11 disturbance, either a mental or an
12 emotional -- or an emotional disturbance. And
13 they can consider that so that they may impose
14 a life sentence rather than the death
15 sentence. That's something that they can
16 consider to make less serious your actions. I
17 want -- I intend to tell the jury that, but I
18 need for you to tell me you want me to do
19 that, if you do.

20 (Pause in proceedings.)

21 MR. WEIK: Yes, sir.

22 THE COURT: Sir?

23 MR. WEIK: Yes, sir.

24 THE COURT: Say again?

25 MR. WEIK: Yes, sir.

1 THE COURT: You want me to do that? All
2 right, sir. Well, let me ask you this: Do
3 you want me to tell them, then, that you had
4 the capacity to appreciate the criminality of
5 your conduct -- excuse me, that at the time of
6 the murder, or the crime, that they should
7 consider, they should think about or consider
8 the capacity which you had to understand what
9 it is that you did and to conform your conduct
10 to the requirements of law, or that at the
11 time that that crime was committed that your
12 ability to conform your conduct to the
13 requirements of law was substantially
14 impaired; in other words, that you had a hard
15 time, plain English, you had -- you were
16 impaired to the extent that you had a hard
17 time conforming what you did to the
18 requirements of law? That's about as plain as
19 I can put it. Do you want me to charge that
20 to them as well, let them consider that?

21 MR. WEIK: Yes, sir.

22 THE COURT: All right. And then the
23 final thing, it just says that I'll tell the
24 jury that they ought to consider your age or
25 your -- or your mentality at the time of the

1 crime; in other words, what your age was. And
2 also they may consider what your mental status
3 was at the time the crime was committed. Do
4 you want me to charge or tell the jury they
5 ought to consider that?

6 MR. WEIK: Yes, sir. Yes, sir.

7 THE COURT: All right.

8 MR. BAILEY: Your Honor?

9 THE COURT: Now, let me ask you this.
10 Excuse me.

11 MR. BAILEY: I didn't mean to interrupt
12 you.

13 THE COURT: I just wanted to go one
14 more -- there's one step further I've got to
15 go. Is there any other, is there any other
16 mitigating statutory circumstance you want me
17 to submit to the jury? Is there anything
18 else -- you all are showing him that, aren't
19 you? He's reading it, I know he is.

20 MS. HARDEE-THOMAS: Yes, Your Honor.

21 THE COURT: Is there anything else that
22 you all want me to charge other than the four
23 that I have already talked about? And
24 specifically I'm talking to Mr. Weik.

25 MR. BEAUFORD: Again, I think you said

1 you would do that catch-all?

2 **THE COURT:** Absolutely. I'm going to
3 tell them that they can consider any non
4 statutory mitigating circumstance, anything
5 which makes less the culpability of his
6 conduct.

7 **MR. WEIK:** Yes, sir.

8 **THE COURT:** All right. What else? Would
9 there be anything else would you say?

10 **MR. BEAUFORD:** Of course, you already
11 said you're going to charge the adaptability.

12 **THE COURT:** Well, no, I didn't say that.
13 I didn't say that. What I said was you all
14 could argue that. I didn't tell you I was
15 going to charge that. I didn't say that I was
16 going to put that as one of the non statutory
17 mitigating circumstances in and of itself. Do
18 you want me to put that down on the sheet as a
19 non statutory mitigating circumstance?

20 **MR. BEAUFORD:** No, Your Honor.

21 **THE COURT:** You don't have to. You can,
22 you don't have to, but, I mean, it's
23 discretionary and I want them to tell me.

24 **MS. HARDEE-THOMAS:** Your Honor, are you
25 putting any -- excuse me -- an any other non

1 mitigating circumstances --

2 THE COURT: That's correct.

3 MS. HARDEE-THOMAS: -- in the catch
4 all --

5 THE COURT: Which will catch the
6 adaptability of prison.

7 MS. HARDEE-THOMAS: Thank you. That's
8 the point.

9 THE COURT: That's the point. I'm not
10 precluding you all from arguing, I'm simply
11 saying I'm going to put one sentence which
12 gives you the right to talk about anything
13 that makes less his -- anything else,
14 Solicitor?

15 MR. BAILEY: I'm just getting back to
16 future dangerousness issue.

17 THE COURT: Yes, sir.

18 MR. BAILEY: In the State versus Jonathan
19 Bell Simmons, it went to the Supreme Court,
20 the solicitor in that case argued what do we
21 do with this man now that he's in our midst.
22 And the United States Supreme Court seized on
23 that as a future dangerousness argument. So I
24 don't think it takes a whole lot to constitute
25 a future dangerousness argument or to --

1 evidence to support it. As I said, that's --
2 in Simmons, as I recall it, there wasn't any
3 kind of psychiatric testimony on that,
4 Harpootlian just said, "What do we do with him
5 now that he's in our midst?" And they said,
6 "Here's your argument, they're entitled to
7 charge."

8 So I just view the law as being
9 pretty much anything as you say could be a
10 future dangerousness argument.

11 THE COURT: Well, I just --

12 MR. BAILEY: Once you cross that line
13 they've got to know that it's life without
14 parole. And they all know that now.

15 THE COURT: Well, again, I mean, the only
16 problem that I have with it is that I felt
17 like when you all started this trial, and you
18 did, you came up and said I want -- you might
19 as well ask each of these jurors on voir dire
20 about this business of parole, or tell them
21 life means life without parole. And the
22 reason is that I'm going to argue future
23 dangerousness. That was the way you started
24 this trial.

25 MR. BAILEY: Yes, sir.

1 THE COURT: The problem that I've got is
2 I don't know that there's any evidence at all
3 which supports that now. You've got four
4 people who basically say he can adapt to
5 prison, and I haven't heard anybody who says
6 that he can't. And I realize you say the two
7 are sort of -- are different. But then if
8 he's in prison and adapting to prison, how can
9 he be dangerous? If there is no parole how
10 can he be dangerous?

11 MR. BAILEY: He can be dangerous to other
12 inmates. Your Honor, State versus George,
13 1996 case.

14 THE COURT: Yeah.

15 MR. BAILEY: The court said in that case
16 that both sides can argue their opinions
17 regarding the deterrent effect of the death
18 penalty, but cannot introduce specific data to
19 corroborate their views. In other words,
20 you're prohibited on deterrence from
21 introducing any evidence that you're allowed
22 to argue. So if you can argue deterrence
23 without any evidentiary support, I don't know
24 why I can't argue future dangerousness based
25 on an inference of past conduct.

1 THE COURT: What inference of past
2 conduct are you talking about other than the
3 facts of this case, anything else?

4 MR. BAILEY: The murder itself, the death
5 threat to --

6 THE COURT: The death threat to the other
7 fellow. Well, that's some evidence of past
8 conduct. There's your evidence of past
9 conduct.

10 MR. BAILEY: I think I would be entitled
11 to say what do we do with this guy now he's in
12 our midst.

13 THE COURT: I don't think there's any
14 doubt about that.

15 MR. BAILEY: If I say that, then he's
16 entitled to that life without parole charge,
17 so we're into future dangerousness just based
18 on that scenario.

19 THE COURT: But I guess my point was how
20 far can you go in your argument to say he's
21 going to do, or he's likely to do this or
22 that, and without any evidence? But now that
23 I recall, if you've got one witness who came
24 first thing this morning who said he
25 threatened my life four times, and so you do

1 have some basis upon which to make that
2 argument other than just the -- this crime
3 itself. And I think I'm going to allow you to
4 do that.

5 But I don't want you to -- if you
6 don't, please, sir, don't go too far because,
7 I mean, you know, I think you're walking a
8 fine line when you get to going too much on
9 future dangerousness beyond what's in this
10 record and what common sense would dictate
11 people might expect he would do in the future.
12 It's one thing to threaten somebody and
13 another thing to actually carry it out.

14 MR. BEAUFORD: Your Honor, I would note
15 my objection to that charge.

16 THE COURT: I understand. I'm looking
17 at....

18 (Pause in proceedings.)

19 THE COURT: As I say, if there's any
20 evidence in this record which supports an
21 argument, then it can be properly made. And
22 there is evidence in this record, because the
23 first witness this morning said that he
24 threatened his life four times. And that's
25 another one to at least give the solicitor a

1 foot in the door.

2 To me the question comes, is how far
3 can you go with that kind of argument. And
4 I'm not sure that there's anything I can do to
5 stop it, once it's done it may be too late.
6 But anyway, that's the only thing I can do at
7 this point. I'm bound by what we've got in
8 evidence here and I think he's got the right
9 to make an argument, but your objection is
10 certainly noted there.

11 Is there anything else now, you
12 ladies and gentlemen can tell me, that I need
13 to do before?

14 You all might tell Mr. Weik, just
15 explain to him, and I'm not in any way
16 advising him of what exactly to say by no
17 means, but obviously he's going to be limited
18 to what he's heard here in court. And at this
19 stage in the trial there really shouldn't be
20 any discussion of the fact that he's not
21 guilty of the crime and so forth.

22 Obviously what he needs to
23 concentrate on is the sentence and what he
24 feels would be an appropriate sentence for
25 what he's done. I mean, that's what all of

1 you are hear to talk about, of course.

2 MR. BAILEY: Your Honor, just to protect
3 the record I think there is some law to the
4 effect the defendant can't be prohibited from
5 claiming his innocence even in the penalty
6 phase and they found him guilty.

7 THE COURT: Well, I thought otherwise.
8 What I thought was that you couldn't argue a
9 residual doubt. Maybe I'm mistaken about
10 that. I thought that the --

11 MR. BAILEY: Let me see if I can find
12 what I was thinking about.

13 THE COURT: I thought it was improper for
14 the defense to get up and say you might still
15 have a doubt, might be a little doubt, as to
16 his guilt and therefore don't take his life.
17 But maybe I'm incorrect about that. I'll tell
18 you the safe thing to do is let him talk about
19 anything he wants to talk about in the
20 evidence. If he wants to talk about it, I'm
21 going to let him talk about it, I don't need
22 to listen to the lawyers. Then he can't
23 complain and I can't be in trouble.

24 MR. BAILEY: Your Honor, Wilbur --

25 THE COURT: Wilbur Davis?

1 MR. BAILEY: -- Davis is the one I was
2 thinking about.

3 THE COURT: Yeah.

4 MR. BAILEY: That's not quite the same
5 thing you said, but close, in the ballpark.

6 THE COURT: What I'm simply saying for
7 the record is if it's in evidence in this
8 case, he can talk about it. Let's take five
9 minutes.

10 (Recess taken.)

11 MR. BEAUFORD: Your Honor.

12 THE COURT: Yes, sir.

13 MR. BEAUFORD: While we were in recess
14 Mr. Weik indicated that he will not make a
15 closing.

16 THE COURT: Mr. Weik, you've changed your
17 mind now, so you don't want to say anything to
18 the jury?

19 MR. WEIK: Yes, sir.

20 THE COURT: Is that right, you do not
21 want to?

22 MR. WEIK: Yes, sir.

23 THE COURT: All right. Yes, sir, you do
24 not want to, or yes, sir, you do want to? I
25 mean, I would think you would say, no, sir, I

1 don't want to. You tell me what you want to
2 do.

3 MR. WEIK: No, sir. I don't want to make
4 a --

5 THE COURT: Do not want to make it?

6 MR. WEIK: Yes, sir.

7 THE COURT: All right, sir. With that
8 being the case then....

9 MR. WEIK: Thank you, sir.

10 THE COURT: All right. Thank you.

11 All right. If you all are ready
12 I'll bring the jury in.

13 MR. BAILEY: State's ready.

14 THE COURT: All right.

15 MR. BEAUFORD: Yes, Your Honor.

16 THE COURT: All right.

17 (Jury present.)

18 THE COURT: All right. Ladies and
19 gentlemen, we're now going to conclude this
20 proceeding. The attorneys have the right to
21 make a closing argument. At this time the
22 format follows the same as the one before.
23 The State is required to open, the defendant
24 has the right to close. Please give them your
25 attention, and after they make their remarks I

1 will charge the law that you should apply in
2 the case.

3 Solicitor?

4 MR. BAILEY: Thank you, Your Honor. I
5 want to thank you all once more, it's been
6 a -- not been an exceedingly long trial, but a
7 long day. I know we are all tired, I ask you
8 to bear with me. I've got a lot of things
9 that I need to tell you all. I'm going to try
10 not to draw it out, but as I've said before I
11 don't get a chance to get back up here again,
12 this is it for me as far anything I say to
13 you.

14 Judge Shuler told you all that jury
15 service in a case like this, a death penalty
16 trial, is the highest duty that any citizen
17 can render to their state and their country,
18 and that's true. You all are performing that
19 duty, you've done it well. So on behalf of
20 the State of South Carolina, the citizens of
21 Dorchester County, and the family and loved
22 ones of Susan Krasae, I want to thank you for
23 your duty, your attention, your continuing
24 attention.

25 At this point we're not dealing with

1 guilt or innocence. Mr. Weik over here sits
2 before you a guilty man. Guilty of murder
3 with malice aforethought beyond a reasonable
4 doubt, guilty of burglary in the first degree.

5 Your sole duty, as you know, is to
6 determine the appropriate punishment in this
7 case. And you all went through the jury
8 qualification several days ago. Each of you
9 was put under oath, you raised your hands and
10 you swore to tell the truth, the whole truth,
11 nothing but the truth so help me God. And you
12 were asked a series of questions, each one of
13 you, by the judge, by Mr. Beauford, and by me.
14 And you answered those questions under oath.

15 Each of you all said under oath that
16 in an appropriate case I can bring back the
17 death penalty, and each of you all said under
18 that same oath, if I bring back the death
19 penalty I can sign my name to that death
20 verdict form. And each of you all then said,
21 if I do those two things, I can come out and
22 announce that verdict in open court when my
23 name is called out.

24 Each of you all swore that if the
25 case was bad enough I can vote for the death

1 penalty knowing that sentence would be carried
2 out. And when you all said that, I believed
3 you, or you wouldn't be on this jury.

4 So the issue of whether or not the
5 death penalty is right or wrong, whether we
6 ought to have a death penalty in this state,
7 is not an issue. Each of you all said under
8 oath that in an appropriate case I can bring
9 back the death penalty. So the only question
10 now is this the case, is this the defendant,
11 that's appropriate for the death penalty.
12 That's the point we're at.

13 I'm going to talk to you all about
14 aggravating circumstances, mitigating
15 circumstances, circumstances of the crime
16 committed by Mr. Weik, his characteristics and
17 victim impact. The impact of this death on a
18 lot of people that miss Susan Krasae and cared
19 about her.

20 As I said in my opening to you all,
21 you all would get to know her. And I tried to
22 do that the only way I knew how to do it. You
23 all got a brief glimpse of her. She was 27
24 years old at the time of her death, the mother
25 of two children that she was devoted to. She

1 worked, she wrote poetry, she loved life.

2 This man over here took her life
3 about a year ago today by shooting her in her
4 own home with the children there with four
5 shots of double aught buckshot. Her last
6 thoughts as you all heard the neighbor, Tommy
7 Adams testify, were not for herself, for her
8 children. You recall his testimony that he
9 heard her yell "Don't shoot my kids. Don't
10 shoot my children." Then she was shot in the
11 arm leaving that a mangled mess, and he heard
12 a scream after that.

13 You all saw those kids testify. I
14 hated to put them on the stand, but I felt
15 like you all needed to know the whole story to
16 make this decision. And it says -- those kids
17 say more than I can say, or more than anybody
18 can say about the kind of person Susan Krasae
19 was, because a bad person couldn't raise kids
20 like that.

21 The facts of this case spell out a
22 course of conduct that's so devoid of
23 conscience, so lacking in human compassion
24 that it cries out for the death penalty, if
25 we're going to have a death penalty in this

1 state.

2 Last week when each of you all said
3 that you could bring back the death penalty,
4 you had a mental picture of a murder so bad
5 that it would warrant the death penalty, that
6 the only appropriate punishment would be the
7 death penalty.

8 Ladies and gentlemen, this is that
9 case. You all have seen it, you've heard it
10 over the last couple of days. This man
11 intentionally murdered this woman in the
12 presence of her two children. That little
13 girl saw it. Those pictures you all saw, she
14 saw that, her own mother being shot down for
15 doing nothing more than trying to protect her
16 son from this guy calling him up saying, "You
17 got to pick between me and your mom's
18 boyfriend." And then when he didn't like the
19 answer, coming over there to give her a hard
20 time about it. Just trying to protect her
21 kids.

22 And he knew they were there, he knew
23 those kids were there. We had this sketch,
24 and I asked Mr. Weik, I said, "Where were
25 those kids? Put a D where Daniel was, put an

1 A where Amber is." And you recall Amber's
2 testimony that she was down here in her mom's
3 room, that she couldn't close the door because
4 of the shoe rack on it.

5 And you can see that from where she
6 is out here, there's a clear shot of where her
7 mother's body was. He not only knew they were
8 in the trailer, he knew where they were in the
9 trailer. Can you imagine a man shooting a
10 woman with his own son there cowering in the
11 back room?

12 If you all heard or read in New York
13 or California somewhere that somebody walked
14 into somebody's house and kicked the door open
15 shot a dog four times and killed it, you'd say
16 that's horrible. How can a person do that to
17 an animal? Well, this man did it to a woman,
18 a human being, here right in Dorchester
19 County. A fellow human being who had every
20 right to live. He had no right whatsoever to
21 take her life like that. Wasn't only a
22 malicious act, it was a cowardly act.

23 Mr. Weik is a grown man, strong,
24 healthy man. When he burst into that house
25 with that loaded shotgun, that first shot

1 almost took her arm off. And we know that was
2 the first shot because he said so two time in
3 both of his statements.

4 Eventually she fell to the floor.
5 And you couldn't imagine anybody more totally
6 helpless than somebody laying on the floor
7 with their arm in that condition that you all
8 saw it in through those pictures that I had to
9 show you. And then this man shot her three
10 more times as she was helpless. That is the
11 act of a coward, and I can't imagine a more
12 cowardly act than what you all know took
13 place. She didn't have a chance. Her life
14 was snuffed out in the prime of her life.

15 And what was the motive, concern for
16 his son? How is killing the person that
17 little boy loved the most in this whole world
18 going to benefit his son in any way?

19 You know, we're in court, we're
20 trying a case and the judge has on his robe
21 and the lawyers have on their coats and ties,
22 and we stand up and we sit down at the
23 appropriate time and it's a real formal setup.
24 And in this atmosphere, this clinical
25 atmosphere we've got in the courtroom, I don't

1 feel like I'm adequate in this environment to
2 really get across to you all how horrible this
3 thing really was.

4 You just have to take yourself out
5 of this courtroom in your mind's eye and
6 imagine what it was like for Susan Krasae a
7 little over a year ago. The terror she felt
8 for herself and for her children at this man's
9 hands.

10 Now, Judge Shuler's going to talk to
11 you all about aggravating circumstances. As I
12 said earlier, the State has alleged two
13 aggravating circumstances in this case. And
14 again, the significance of it, he'll charge
15 you this, is that you cannot bring back the
16 death penalty even if you want to, if you
17 think it's warranted even, unless you find
18 beyond a reasonable doubt that at least one
19 aggravating circumstance exists. If you find
20 that then you can, but you don't have to,
21 bring back the death penalty.

22 We've alleged two aggravating
23 circumstances. One has already been proven,
24 the burglary, in the first part of this trial.
25 And I've incorporated that evidence in the

1 second phase. And in addition to that you
2 heard Amber's testimony where she got into it.
3 again for the second phase. So that's been
4 proven.

5 In addition we allege the
6 aggravating circumstance of physical torture.
7 And Judge Shuler will instruct you on physical
8 torture. But physical torture exists when a
9 victim, a murder victim, is subjected to
10 serious physical abuse before death that
11 exists when the victim's subjected to
12 aggravated battery. He'll give you a lengthy
13 charge on that.

14 Among the things he'll tell you is
15 you have an aggravated battery if you have a
16 difference in the ages or physical conditions
17 of the defendant and the victim, or the victim
18 and the offender are of different sexes.

19 Physical torture is the intentional
20 infliction of serious abuse upon the body of
21 another prior death. It's not when there's
22 instantaneous death.

23 You heard John Weik's confession
24 about how familiar he was with firearms. And
25 after describing to Detective Marshall how he

1 held the gun when he went in there, and I
2 think he said something, it's easier to bring
3 it up than to bring it down, he tells you what
4 a good shot he is. And we got that part of
5 the tape here.

6 (Partial audiocassette tape played for
7 the jury.)

8 Also when he talked to Deputy
9 Burnette out on the road he said, "I'm an
10 excellent shot." That's on page 4 of the
11 transcript that you all had back there. He
12 was real clear in his confession that the
13 first shot was to Susan Krasae's arm. And as
14 horrible as that injury was, Dr. Collins that
15 it would not have caused immediate death. In
16 fact, she could have survived if that was the
17 only time she was shot. She would have
18 definitely lost the arm, but she would have
19 survived that shot.

20 If Mr. Weik was determined to
21 immediately kill her, if that was his main
22 goal, he could have shot her in the head, a
23 vital part of the body that would have caused
24 instantaneous death. He was approximately
25 seven feet away from her in the same room she

1 was in, he's a good shot, he's an experienced
2 hunter. He could have shot her anywhere he
3 wanted to and he shot her in the arm that
4 first time from seven feet away.

5 And again, we know she was alive at
6 that first shot, she was standing, because
7 Detective Asbell told you all, showed you the
8 pictures of the socks, blood soaked bottoms,
9 where she was standing in her own blood. And
10 again, Tommy Adams heard her scream after that
11 first shot.

12 The shots to her intestinal, her
13 groin area, again, cording to Dr. Collins,
14 that groin shot was not a shot that destroyed
15 any vital organs, she could have survived that
16 shot. He's a deer hunter, he knows that. He
17 prolonged her suffering. And if you look at
18 the places where he shot her, he shot her in
19 the crotch area, he shot her in the right
20 breast. He knew where he was shooting. He
21 was right there. He had control of it.

22 And again, I don't have to prove
23 both aggravating circumstances. Proof of
24 either one, burglary or physical torture in
25 the commission of this murder, is sufficient

1 for you all to bring back the death penalty if
2 that's what you all decide to do when you
3 deliberate.

4 But you're not limited to the
5 aggravating circumstances, you can look beyond
6 that. You can look at Weik's conduct, his
7 prior conduct, he's threatened to kill before.
8 You heard his foreman up here talking about
9 how he got fired at Broyhill in January 1998.
10 That he threatened to kill him, that he
11 thought he was serious, so serious that he was
12 fired from an eight-year job.

13 I want to talk to you all about the
14 mitigating circumstances that Judge Shuler's
15 going to ask you all to consider. They'll be
16 given to you all in writing. The fact that
17 Judge Shuler gives you a mitigating
18 circumstance doesn't mean that it's been
19 proven. It means there's evidence in the
20 record of that mitigating circumstance, that
21 you all are free to consider it.

22 It's up to you to decide whether you
23 accept that mitigating circumstance as being
24 true, and if it is true, what significance you
25 want to pay to it. Because if I can prove an

1 aggravating circumstance, you can bring back
2 the death penalty regardless of the fact that
3 one, two, three, four, or five mitigating
4 circumstances are there.

5 One aggravating circumstance is
6 technically all you need to go ahead, proceed,
7 and bring back the death penalty.

8 Let's look at them now, but remember
9 that these are mitigating circumstances for
10 you to consider, it's up to you to decide what
11 weight to give them, if any.

12 The first one he'll give you is that
13 Mr. Weik has no significant history of prior
14 criminal convictions involving the use of
15 violence against another person. And we'll
16 give him that one, that's correct. He's got
17 no record. But at least with a career
18 criminal you can predict what he would do.
19 This man did this out of the blue. He's
20 scarier than a career criminal, he's
21 unpredictable.

22 The next three -- the last three
23 aggravating circumstances that the judge will
24 give you relate, they all deal with mental
25 issues, so I'm going to talk about them at the

1 same time. The important thing to remember in
2 these next three mitigating circumstances are
3 when we're talking about a mental condition,
4 we're talking about his state of mind on the
5 date he committed this murder. April 30th,
6 1998.

7 Listen to the judge. He's not going
8 to ask you to consider as a mitigating
9 circumstance what his mental condition was in
10 September 1997, or what it is now, or what it
11 was two years ago or ten years ago. This all
12 focuses in on the date of the murder, his
13 mental condition.

14 The first one he'll ask you about,
15 he'll submit to you, the murder was committed
16 while the defendant was under the influence of
17 mental or emotional disturbance. And these
18 are all kind of related and overlap. The
19 second one he'll charge you on is the capacity
20 of the defendant to appreciate the criminality
21 of his conduct or conform his conduct to the
22 requirements of law while substantially
23 impaired. And the last one is his age or
24 mentality at the time of the crime. So we're
25 talking about his mental state.

1 Let me talk about his age first,
2 since that's part of one of these mitigating
3 circumstances. This man's 32 years old, he's
4 a mature adult. Old enough to vote, old
5 enough to serve in the military, old enough to
6 serve on a jury, he's old enough to commit an
7 act of murder in cold blood.

8 Let's look at the mitigating
9 circumstance that he was under the influence
10 of a mental or emotional disturbance at the
11 time that he murdered Susan Krasae. I told
12 you all at the beginning that you'd hear from
13 a lot of psychiatrists and psychologists. And
14 you heard from both sides, ones that I called,
15 ones that they called. The defense
16 psychiatrists say he's paranoid schizophrenic.
17 The State's psychiatrists where they did a
18 court-ordered evaluation say, no, he's not a
19 paranoid schizophrenic, he's got a schizotypal
20 personality. That's the label they put on
21 him.

22 But -- and all of them have
23 testified that Weik has told them that he
24 hears voices sometimes, he hears crickets, he
25 hears two voices, he hears eight voices, that

1 he sees this hag at times.

2 And like I told you before, I'm not
3 going to stand up here and say Mr. Weik is
4 normal, a normal everyday person, because he
5 isn't. He's a murderer. And as I said
6 before, murder is not normal. He's a
7 murderer; therefore, he's not normal, but that
8 does not mean that he shouldn't be held
9 accountable for his conduct.

10 If you said that then, you know, no
11 murderer would get the death penalty because
12 he'd say he committed murder; therefore, he's
13 abnormal, let's give him this mitigating
14 circumstance. So I'm not saying he's normal.

15 But, no one ever got up here and
16 said he doesn't know right from wrong. In
17 fact, they said just the opposite. They
18 didn't say that on the date he committed this
19 murder he was driven by any kind of
20 irresistible impulse to do what he did. He
21 had the ability to conform his conduct to the
22 requirements of the law, he had the ability to
23 engage in purposeful goal-directed activity,
24 he had the ability to make his choices, that
25 he made his choice.

1 And remember, when we talk about
2 being under the influence of mental or
3 emotional disturbance, we're talking about at
4 the time the murder was committed. There is
5 no evidence, other than what you hear in the
6 tape, that he was hearing voices on
7 April 30th, 1998 or he was having any visual
8 hallucinations.

9 He was angry with the mother of his
10 son about problems the child had at school or
11 her boyfriend or the argument over the
12 telephone. That motivated him, not any kind
13 of voices or hallucinations or anything of
14 that nature. He was angry at her, and
15 although he's got mental problems, this murder
16 was completely unrelated to those mental
17 problems. There's no connection, there's no
18 tie-in.

19 It's just like a person could be
20 nutty as a fruitcake, but one day they decide
21 they need money to pay some bills and they
22 decide to rob a bank and they do it. The bank
23 robbery would have nothing to do with their
24 mental status. That's this case here. He's
25 got mental problems, but none of these

1 psychiatrists or psychologists tied those
2 problems in to the murder of Susan Krasae.

3 He may think the CIA was after him,
4 but he's never said that he thought Susan
5 Krasae was a CIA agent, the ATF, or anything
6 like that. He had a motive, not a good
7 motive, but he had a motive that he was angry
8 at her. So it had nothing to do with all
9 these voices and hallucinations and all that.
10 The only voice he was hearing was his own
11 voice. He's got that on that handwritten
12 statement there "I thought to myself, 'ten,
13 25 years, life'" and decided to go ahead and
14 do it.

15 And you've heard the psychiatrists
16 talk about the sensation he had with this like
17 seeing himself on a monitor or feeling
18 detached from his body. And they said that's
19 a normal experience when somebody's engaging
20 in traumatic activity, automobile wreck,
21 committing a violent act like that. That's
22 the way they perceive it, that's the way they
23 can relate it. But it's normal, it's not any
24 kind of psychotic behavior.

25 Let's look at the mitigating

1 circumstance that his ability to conform his
2 conduct to the requirements of the law are
3 substantially impaired. And again, we're
4 focusing in on April 30th, 1998. Weik was
5 stopped by the police almost immediately
6 within, you know, less than a mile of where
7 the murder took place by the deputies, and you
8 all heard the videotape when Mr. Burnette was
9 questioning him.

10 (Portion of videotape played for the
11 jury.)

12 So here's a man that knows he
13 committed a murder and wants to be punished
14 for it. Later on he gives this taped
15 interview to Tom Marshall. And here's part of
16 what he said to Mr. Marshall.

17 (Portion of audiocassette tape played for
18 the jury.)

19 Why would Mr. Weik want to make sure
20 there was nobody behind the door unless he
21 knew what he was doing was wrong? He's in
22 control of what he's doing, he's thinking,
23 he's carrying out a plan, he wants to make
24 sure there's nobody behind that door that
25 could interfere with what he's planning on

1 doing. He's thinking.

2 Later on in that same interview he
3 says this about the sequence of the shots.
4 And this is important.

5 (Portion of audiocassette tape played for
6 the jury.)

7 Took the safety off and fired
8 another shot. So here he is, he's got -- he's
9 fired one shot, he's mangled her arm up,
10 second shot jams. He's got the mental
11 wherewithal to put the safety on the gun so it
12 doesn't go off until he's ready, clear the
13 jam, and fire that second shot. And you
14 recall the Adamses, they gave different
15 accounts of it, but it's one shot quick, there
16 was a hesitation between Tommy Adams said 15
17 seconds, Mrs. Adams said like about a minute
18 and a half. But that gun jammed after the
19 first shot, he puts the safety on, clears that
20 jam -- takes the safety off, clears the jam
21 and then puts the safety off. So he's
22 thinking, he's following, he's got goal-
23 directed activity there.

24 This is a man who's in complete
25 control of what he's doing, has the capacity

1 to conform his conduct to what the law
2 requires him to do and he chooses not to do
3 it. Later on he talks about leaving the scene
4 of the murder, that he drives off.

5 (Portion of audiocassette tape played for
6 the jury.)

7 Why would a man who didn't know that
8 he'd done wrong run from the scene of crime?
9 He wouldn't run. You recall Officer Gamache's
10 testimony when he first saw Mr. Weik, the
11 truck was speeding away from the scene of the
12 murder, he met him head-on, and as soon as he
13 turned around he put his brakes on. And
14 here's what Weik says when he stops.

15 (Portion of audiocassette tape played for
16 the jury.)

17 Again, why would he stop unless he
18 knew he was doing wrong?

19 Finally, toward the end of this
20 interview, this is what Mr. Weik says.

21 (Portion of audiocassette tape played for
22 the jury.)

23 I submit, ladies and gentlemen, that
24 based on Weik's own statement he's fully aware
25 on April 30th, 1998 that the act of murder was

1 wrong, he was in complete control of what he
2 was doing, he knew what he was doing. Even
3 his own, their own psychiatrists they called,
4 Donna Schwartz-Watts, I asked her, I believe,
5 "Was he in complete control of what he was
6 doing?"

7 And she said, "Yes, he was." And as
8 I said before, these psychiatrists can get up
9 here and give you all conflicting diagnoses
10 and all that. And I don't care what label
11 they put on him, I don't think it really
12 matters to you all whether you want to call
13 him a paranoid schizophrenic or schizotypal or
14 just an odd screwball, I don't think it
15 matters.

16 The bottom line is that whatever was
17 wrong with him didn't have anything to do with
18 the murder that day. He didn't wrestle with
19 that hag that day or hear the eight voices
20 talking to him. Maybe that happened on other
21 days, maybe it didn't, but it doesn't really
22 matter because our focus is April 30th, and no
23 testimony he wasn't in complete control of
24 what he was doing on that day.

25 And again, as far as this monitor

1 business, you've heard the testimony that's a
2 way of perceiving stuff and it's a normal
3 human experience.

4 This didn't suddenly come on him.
5 It wasn't like when you're talking about your
6 inability to conform your conduct to the
7 requirements of the law you think about an
8 irresistible impulse, you snap, you did
9 something spur of the moment. He planned this
10 thing at least four o'clock that day at work
11 when he told his boss what you all heard the
12 boss say: "I'm going to my son's house to
13 resolve the problem, if you don't see me
14 tomorrow you'll know something happened."
15 This wasn't a snap thing. This was something
16 he had planned out.

17 And when he tells you all about
18 seeing himself on a monitor, he wasn't so
19 detached as he would let you all -- have you
20 all believe. He wasn't so detached. You
21 think of somebody on a monitor, you know, this
22 isn't me, this is somebody else. You're not
23 feeling emotion. But the evidence shows this
24 man over here, John Edward Weik, sitting over
25 here with his lawyers, enjoyed the act of

1 killing Susan Krasae.

2 You all have heard two different
3 accounts of it. In his taped statements he
4 says he fired the first shot and it felt okay,
5 second shot felt good, third shot felt better,
6 fourth shot felt even better. This is a man
7 that relished the act of killing. He was in
8 total control, he knew what he was doing and
9 he enjoyed it.

10 You all have heard testimony about
11 his background. He apparently comes from a
12 dysfunctional family. Well, a lot of people
13 come from dysfunctional families. I mean, you
14 look at television and you see Bill Cosby or
15 Ward and June Clever, that isn't real life.
16 People come from dysfunctional homes all the
17 time, alcoholic parents and a variety of
18 problems. His brothers and sisters were
19 raised in that same house and they didn't go
20 out and kill people. That's no excuse.
21 There's no connection.

22 Where did any psychiatrist or
23 psychologist draw some kind of a link between
24 his background and the murder of Susan Krasae?
25 It's just two separate unrelated things.

1 Again, what he did he did because he wanted to
2 do it. He made his choices, chose to place
3 that call to Daniel at his house, chose to
4 remove that gun from the rack in his house,
5 chose to load the shotgun and put six shells
6 in there. And he tells you all it was left
7 over for deer season. Somehow or another he
8 gets four more rounds, live rounds in his
9 pocket that Mr. Gamache takes. This is
10 planning. This isn't sudden impulse.

11 He chose to drive over there and
12 confront her on her own property, get the
13 shotgun out of the truck, force his way into
14 the house knowing those kids were there, took
15 the gun off safety, fired that shot at her arm
16 as she tried to call the police. As we've
17 talked about before, cleared that jam from the
18 shotgun and committed a cold-blooded murder.

19 Look at life imprisonment. You've
20 heard some testimony that he can adjust to
21 life imprisonment. You heard that from the
22 psychiatrist, you've heard that from the
23 social worker. But ask yourselves -- one of
24 the witnesses they called testified a little
25 bit about life in prison, talked about the

1 fact that -- and it's life without parole,
2 there's no dispute about that so he would live
3 the rest of his life out in prison. The
4 defense will tell you about that and the judge
5 will instruct you on that.

6 But when you consider adjustment to
7 prison, you got to look at what you're
8 adjusting to. You're looking at adjustment to
9 a life where he goes to prison, he's behind
10 the fences, he'll be given a prison job,
11 according to that witness sometimes they'll
12 pay them some money, he's got a canteen where
13 they can buy stuff, Cokes, candy bars, that
14 kind of stuff, television to watch in their
15 cells.

16 In the meantime, Susan Krasae is
17 dead and in her grave. And I ask you if life
18 imprisonment is an acceptable alternative to
19 somebody who's done what he's done. That's a
20 choice you all are going to have to make.

21 And again Judge Shuler will instruct
22 you, that you can consider any mitigating
23 circumstance that you want to. But even if
24 you find every mitigating circumstance he
25 instructs you on, all four of them, you can

1 still bring back the death penalty if you find
2 that we've proven at least one aggravating
3 circumstance. And we've clearly done that
4 with the burglary.

5 You don't consider a case like this
6 by counting up the aggravating circumstances,
7 counting the mitigating circumstances, you
8 look at everything. You look at circumstances
9 of the crime, the characteristics of the
10 defendant and you look at the victim impact,
11 the harm that he has caused not only to Susan
12 Krasae, but to her family, the people that
13 loved her.

14 When I sit down here and the defense
15 gets their opportunity to speak with you all,
16 they're going to get up here and they're going
17 to play the blame game with you. They're
18 going to blame his mental problems for what
19 happened here. They called his sister, they
20 called his mother as witnesses here. And they
21 were nice people. And we all feel sorry for
22 them because of what their son did and what
23 he's facing. They're going to want you to
24 vote for a life sentence out of sympathy for
25 Mr. Weik and his family.

1 But just listen to Judge Shuler when
2 he instructs you on the law in this case.
3 He's going to tell you that your decision
4 cannot be based on passion, prejudice, public
5 opinion, sympathy, or any other arbitrary
6 factor. You can't base it on sympathy. As
7 much as you may feel sorry for his family you
8 have to base it on the facts of this case.

9 Let's not forget who the victim was
10 in this case. The victim was Susan Krasae.
11 The victims are her family back here sitting
12 out there in the trial, the people that loved
13 her. That's what this hearing's about. This
14 isn't a rehabilitation hearing, it's not an
15 excuse hearing, it's a penalty hearing. And
16 there's only one person here to blame for what
17 occurred on April 30th, and that's John Weik.

18 When the defense gets up here in a
19 few minutes and tells you how severe a life
20 penalty is, how severe a life without parole
21 sentence is, they'll tell you it's the next
22 worst punishment to the death penalty.
23 Remember, that's the sentence they're begging
24 you all for. A life sentence is the best
25 thing that you all can do for John Weik. But

1 this isn't about what's best for John Weik,
2 this is about doing justice in this case.

3 And I know that the life without
4 parole sentence is the easy choice for you all
5 in a case like this, I know that. But
6 sometimes you have to make the hard choice in
7 the hard case, that's what I'm asking you all
8 to do.

9 There have been a lot of tears shed
10 in this case, they have been shed in the
11 courtroom, they've been shed outside of the
12 courtroom, and they'll be shed for years to
13 come when this trial's over. They were shed
14 by some of you all when you heard some of this
15 testimony from both sides. They were shed by
16 relatives of both families. There's one
17 person responsible for every tear that was
18 shed by those children, by these people out
19 here, by these people over here, by you all in
20 the jury box. That's Mr. Weik over here. One
21 person. And he is totally and completely
22 responsible for this whole thing.

23 What I'm talking about, ladies and
24 gentlemen, is accountability. For our
25 judicial system to work, for our society to

1 work, people have to be held accountable for
2 their actions. They have to or the whole
3 system is going to break down. I'm not a
4 social worker or psychiatrist, you all have
5 heard enough from them, I'm a prosecutor.

6 I can't tell you how Weik got to be
7 the way he is now. That isn't my job. That's
8 not your job. Your job is to figure out what
9 do we do with somebody now that he's gotten to
10 be the way that he is, now that he's done what
11 he did, has done. Now that he's in our midst,
12 what do we do with him?

13 This murder was horrendous. It
14 wasn't an act of recklessness, it wasn't a
15 crime of passion like Mr. Beauford told you
16 all it was. It was planned out. It was a
17 cold-blooded murder. And I submit to you that
18 when you kill that way you forfeit your right
19 to live.

20 Hank Aaron was once asked how he hit
21 so many home runs. And he said, "It's easy.
22 I keep my eye on the ball." That's what I'm
23 going to ask you all to do. As you listen to
24 the rest of my statement to you, as you listen
25 to the defense, keep focused on what the

1 appropriate punishment is for intentionally
2 committing cold-blooded brutal murder as you
3 all have heard here.

4 Mr. Weik told Deputy Burnette out on
5 the side of the road there, he said, "How can
6 a person be so gruesome? I really don't
7 know." Well, I don't know either. I can't
8 tell you how he got to be so gruesome.

9 Again, our problem is what do we do
10 with him. Please use your common sense,
11 follow Judge Shuler when he instructs you on
12 the law. Your decision should be based on the
13 circumstances of the crime and the
14 characteristics of John Weik. Ask yourselves
15 what is it about the circumstances surrounding
16 the murder of Susan Krasae that would want me,
17 would lead me to reward this man with a life
18 sentence. What is it about the way he's
19 conducted his life that you've heard from that
20 witness stand, what good things about him are
21 there in the record that would make you want
22 to reward him with a life penalty for a brutal
23 murder like he's done? And that's what it
24 would be, it would be a reward, because that's
25 the best thing you can do for him. There

1 really isn't any credible evidence when you
2 look it and analyze it and break it down.

3 Mr. Weik has forever deprived those
4 two things, one of them his own flesh blood,
5 Daniel, and Amber, of their mother. And not
6 only that, they've been deprived of each
7 other. Daniel not only lost his mother, but
8 he lost his sister, she's up in Kansas. It's
9 all because of him, this man over here. Every
10 bit of it. Those kids will never get over
11 this. Until the day they die they'll never
12 get over it.

13 He's deprived Rebecca Vincent,
14 Debbie Crowley of their sister they loved
15 dearly. You all can tell how much they loved
16 her from their testimony. Deprived her
17 parents, that are old, of their youngest
18 daughter. If they want to see her all they
19 can do is go to the cemetery. There will be a
20 void in their lives until the day they die and
21 they'll never, ever understand why their
22 daughter lost their life in that brutal manner
23 at this man's hands.

24 Nothing that's come out in this
25 trial is sufficient to justify anything less

1 than the death penalty in this case. I submit
2 to you under the facts that you've seen that
3 Mr. Weik deserves the ultimate penalty that
4 the State of South Carolina allows for a
5 brutal murder. He's a burglar, he's a coward,
6 he's a cold-blooded murderer.

7 You all are going to need to come
8 back with a verdict that you can come back out
9 here and look Mr. Weik in the eye when you
10 announce that verdict, that you ought to be
11 able to look in the eyes of everybody in this
12 courtroom and let them know that justice is
13 being done by your verdict.

14 Judge Shuler is going to tell you
15 all as part of his instruction that you can
16 bring back a life sentence in this case for
17 any reason or no reason at all. And that's
18 true, you can do that. You can bring back a
19 life sentence for no reason at all, that's
20 within your power. And that's what
21 Mr. Beauford, Ms. Hardee-Thomas are going to
22 ask you to do, to bring back a life sentence
23 as an act of mercy.

24 But, ladies and gentlemen, you can't
25 do justice in this case and extend mercy to

1 John Weik at the same time. You've got your
2 choice between justice and mercy. The person
3 deserving of mercy is Susan Krasae, and she
4 didn't get it at Mr. Weik's hands.

5 Let's take a look in a minute here
6 at what Mr. Weik did and how he felt. And
7 we're going to put some pictures up here.
8 And, again, I don't like putting these
9 pictures up here, but when I passed those
10 around some of you all wouldn't even look at
11 it. But this is the reality of this case,
12 this is what these kids saw. And I'm going to
13 show a couple of these pictures on the screen
14 because this is part of the case, this is the
15 result of what happened and this is how this
16 man felt when he inflicted these wounds you're
17 going to see.

18 (Photographs shown to the jury.)

19 That's Susan with her kids before
20 all this happened.

21 (Portion of audiocassette tape played for
22 the jury.)

23 Here's the arm.

24 (Photograph shown to the jury.)

25 (Portion of audiocassette tape played for

1 the jury.)

2 Then after he did all that he called
3 her a motherfucker and her daughter heard it.
4 She'll never forget that.

5 What is justice? Justice is a
6 simple concept, justice occurs when the
7 punishment fits the crime. And there isn't
8 but one punishment that fits this crime. Your
9 verdict, no matter what it is, is not going to
10 bring Susan Krasae back, but it can bring
11 justice to this case. By his conduct Mr. Weik
12 has shown that he shouldn't be allowed to
13 exist inside or outside of prison.

14 And your task is an awesome task. I
15 know what I'm asking you all to do is not
16 going to be easy and it isn't supposed to be
17 easy. But as I pointed out to you earlier,
18 the 12 of you all and the two alternates were
19 chosen out of 300 jurors initially summoned in
20 this case as being people who would represent
21 the citizens of Dorchester County and do your
22 full duty to do justice in this case.

23 I'm going to sit down here in a
24 minute, I probably talked too long, but I've
25 got one request to make of you when you

1 deliberate on this case. And you don't have
2 to do it, but this is something I'm going to
3 ask you all to do.

4 You are going to have all the
5 evidence with you when you go back into that
6 jury room, everything from the first part of
7 the trial, the second part of the trial,
8 including the pictures of Ms. Krasae in life,
9 the pictures after life, the crime scene
10 pictures.

11 And I'm going to ask you all to look
12 at those pictures as you deliberate. If you
13 don't do it, you turn a blind eye to the ugly
14 reality of this case. This is before, this is
15 after. This is Weik's handiwork here. That's
16 what this case is all about. You can turn
17 them facedown, leave them in the box if you
18 want to, but, again, if you do that you're not
19 facing the reality of this case.

20 And you all said under oath, "Yes, I
21 can bring back the death penalty." You had in
22 mind a case bad enough to justify the death
23 penalty. Ladies and gentlemen, like I said
24 earlier, this is that case. These are those
25 circumstances that you had in mind when you

1 said, "Yes, if the case is bad enough, I can
2 bring back the death penalty."

3 Again, all of you all said under
4 oath "I can sign my name to that death verdict
5 form if the case is bad enough." Your
6 verdict, whatever it is, will send a message.
7 And I'm asking your verdict to say on behalf
8 of the jurors of Dorchester County, that we're
9 not going to tolerate this kind of inhuman
10 activity in Dorchester County without the
11 person responsible for it paying the ultimate
12 price.

13 On behalf of the citizens of
14 Dorchester County, State of South Carolina,
15 and the family and loved ones of Susan Krasae,
16 I'm asking you all to have the courage to do
17 your full duty in this case. Remember, all 12
18 of you must agree on your verdict. Thank you.

19 THE COURT: Mr. Beauford?

20 MR. BEAUFORD: Ladies and gentlemen of
21 the jury, on behalf of John Weik, Marva
22 Hardee-Thomas and myself, we thank you for the
23 opportunity to present this case to you. In
24 the beginning of this trial I told you coming
25 in here right up front John Edward Weik does

1 not deny killing Susan Krasae. In the
2 beginning he admitted to it, you found him
3 guilty of murder. This is where we are here
4 today.

5 And also during the jury selection I
6 asked you about considering other evidence.
7 And that's what we heard today, those other
8 evidence. And there's not any excuse for the
9 murder, because murder is a serious thing. No
10 one needs to die, for whatever reason there
11 may be no one needs to die. Life is precious.
12 Life is very precious and no one ever needs to
13 die. But in this case we know we have someone
14 who is dead and we have to deal with that
15 accordingly.

16 When -- during this jury selection
17 there was questions asked and there were
18 responses. There were responses as, was it
19 very serious? Yes, murder is a very serious
20 crime. It's very serious because there's a
21 life lost, there's a being no longer here.
22 But when you talk about the death penalty or
23 life without parole, you must look at that
24 very carefully. Because no one can bring life
25 back, no one. Look at that very carefully.

1 You've heard the evidence from the
2 stand. You heard the evidence of Mr. Weik's
3 condition. Whether it was a crime of passion,
4 you have to decide that. Whether the passion
5 was involved in it, you have to decide that.
6 Whether he snapped, you have to decide that.
7 And look at that type of evidence in your
8 deliberation when you come back with a
9 sentence.

10 Yes, some things happen -- some bad
11 things happen to good people. And sometimes
12 for the first time good people generally get
13 involved in bad situations. This is not a
14 case of the death penalty. This is not that
15 case.

16 Sometimes people in their emotions
17 never get the opportunity to cool down, never
18 get to walk away. Sometimes other things
19 affect a person, whether it be a mental
20 situation or whatever, but they don't get that
21 opportunity. Sometimes people react, snap,
22 and before they know it they're in a
23 predicament. Mr. Weik is in that predicament.
24 This is not the case where the death penalty
25 should be invoked.

1 Yes, look at the person's
2 background, it's very important, the
3 upbringing, all of that contributes to what
4 makes the person. But it's not an excuse.
5 We're not saying an excuse that -- and we're
6 not even at that point, where when you go back
7 either he walks away or he's incarcerated.
8 He's going to be punished. He is going to be
9 punished. And one might look light at life
10 without parole in the prison. I've never been
11 there for life, the solicitor has never been
12 there for life without parole, but yet you
13 make light of it, life goes on, it's
14 humpty-dumpty. Life without parole is natural
15 life. Natural life.

16 A lot of people were affected by
17 this case. But it's very interesting that
18 when Daniel got on the stand he still referred
19 to Eddie as his dad. His dad. And that's
20 very important. Because the death penalty
21 does never allow him in life to confront his
22 dad, ask him what happened. But he still,
23 even though in this tragedy, he refers to him
24 as his dad.

25 Yes, Susan is gone, she's not going

1 to come back and Mr. Weik's convicted of
2 murdering her. Look at how it affects him.
3 Yes, it affects everyone in certain ways.
4 Give Daniel that opportunity to confront his
5 dad, have his dad explain to him what happened
6 on that day, give Daniel that opportunity.
7 Because he still referred to him as Dad. That
8 love that they have is still there. Time may
9 heal it, time may not, I don't know. But
10 let's allow him to have that time, Daniel, to
11 confront and deal with that situation. Life
12 means life without parole.

13 You're looking at an individual who
14 had no criminal history. That's very
15 important when you decide whether to give
16 someone the death. It's very important.
17 Looking at an individual who had worked
18 continuously for eight years at one job,
19 someone who is stabled in that aspect. It's
20 very important. You look at someone who all
21 the experts say is emotionally disturbed, he's
22 odd, different names, whatever it may be.
23 But, again, that's not an excuse because he
24 will be punished. But the appropriate
25 punishment is life without parole.

1 You had the opportunity to listen to
2 evidence of aggravating circumstances. We
3 know that burglary, you've already convicted
4 him of that, that's one circumstance that's
5 already there. But, again, you'll be told
6 that just because there are aggravating
7 circumstances you do not have to vote for the
8 death penalty.

9 And this is not mercy, this is
10 justice, because this is not that case. That
11 case that everyone is looking for to the death
12 penalty, this is not that case. Yes, the
13 pictures are horrible. The pictures are
14 horrible. The pictures in themselves will
15 invoke you, get feelings or make you cry.
16 They're there. But this is not that case
17 where one should seek -- one should receive
18 the death penalty.

19 In a matter of seconds or a minute
20 this all happened. It was not laid out, it
21 was not planned. And look back at the
22 evidence. How did he know Daniel would have
23 told him that, "Dad, I can't see you again"?
24 How would he have known that? How would he
25 have known what the response would have been?

1 How would he have known that? So you think
2 about Ron Hall and that scenario, what that
3 meant. Could that have been talking about the
4 school situation? The solicitor had you to
5 believe, he was talking about who will
6 Daniel -- Daniel not going to see each other
7 this weekend or I can't talk to you or
8 whatever, you remember you heard from that
9 stand.

10 This is not that planned situation
11 where you know you're going to do something or
12 whatever. John Edward Weik snapped for the
13 love of his son. There's no excuse, no one
14 should ever die. But there's appropriate
15 punishment for him, life without parole.

16 John holds certain views, whatever
17 those views may be. Say a little strange, but
18 even in his views all the experts say John
19 will adapt to prison life in a structured
20 situation. You don't get more structured than
21 prison when you got to go to bed at a certain
22 time, whatever, they tell you what to do. And
23 you can't leave. That's one of the basic
24 structure in prison, you can't leave, you are
25 there.

1 You heard the confessions. John's
2 statement has always been consistent. "I did
3 it, I did it." Remorse: "I should die as a
4 result of what I did." He's always been
5 consistent. And we didn't come in here trying
6 to fool you in any way. We wanted you to hear
7 the story, but we wanted you to hear that this
8 is not that case that requires a death
9 penalty. This is the case that requires life
10 without parole. This is a case that someone
11 comes in who admits their wrongdoing.

12 And we told you that in the
13 beginning. He admitted to killing Susan
14 Krasae, the woman he loved. He didn't come in
15 here and tell you that, no, I hated her and I
16 just had to do this, even though all this his
17 love for her was still there.

18 This is not a case for the death
19 penalty. This is a case of an individual who
20 snapped. And as John said, and I think he
21 clearly said, it could have been any of us on
22 one of the tapes, he told the officer.

23 Yes, Susan is gone. Yes, there's a
24 lot of hurt here in the courtroom. But I ask
25 that you not be solely moved by the result of

1 the pictures, because I know they're very
2 graphic. Look at all the circumstances that
3 you said you would look at, and you swore to
4 look at all the circumstances surrounding
5 this. This is not the case for the death
6 penalty. Life without parole is the proper
7 sentence.

8 And again, I say when you get in
9 that jury room and you look at the evidence
10 and you find that there are aggravating
11 circumstances, whatever they may be, you still
12 do not have to vote for the death penalty,
13 it's your choice. And don't feel like you are
14 passing up your obligation, your duty, or your
15 sworn obligation that you made earlier to the
16 Court. The law allows you to do that because
17 this is not that case and there's no -- and in
18 those cases where they're not aggravating,
19 like this one, the law allows you not to vote
20 for the death penalty. So don't feel
21 compelled when you go there, back in your
22 deliberation, to say, well, we've got the
23 aggravating circumstances, we have no choice.
24 You have a choice. And it's a choice that was
25 given by the legislature for cases just like

1 this one.

2 I don't need to sit up here and tell
3 you all about the evidence you heard and all
4 of that because you've heard all the evidence,
5 and anything I say would not be evidence,
6 anyway. It's only your recollection
7 collectively when you go back there.

8 But, again, I ask that you hold to
9 your obligations, your sworn obligation that
10 you said you would do, which is deliver
11 justice. No mercy? And we never asked for
12 mercy. Basically we're asking for justice.
13 And justice in this case is life without
14 parole. That's justice, because this is not a
15 death penalty case.

16 This is a case clearly where someone
17 snapped in the wrong situation. He should not
18 have. And I'm not saying, again, that
19 murder's ever right. And I don't think it's
20 ever right because murder is never right, but
21 in this case life without parole is the proper
22 and just sentence.

23 Give Daniel a chance. One day in
24 life if he wants to address his dad, look him
25 in the eye, and say, "Dad, what happened?"

1 Thank you.

2 THE COURT: Ladies and gentlemen, you
3 have heard the evidence now and the arguments
4 of the lawyers. And at this time I'm required
5 to charge the law which you should apply. I
6 realize that some of what I tell you now I
7 have spoken already, but I, under our rules
8 must, again, charge you in regard to several
9 of these issues.

10 First of all, as I told you earlier,
11 this phase of the trial is obviously for the
12 purpose of sentencing this defendant who has
13 been convicted now of the crime of murder.
14 Under our law and constitution you all are
15 still the judges of the facts of the case, and
16 you judge the facts in this portion of a trial
17 such as this just as you would judge the facts
18 in any trial, and obviously in the initial
19 portion of this case.

20 You are the only judges in this
21 court on the facts of the case. You may take
22 into consideration whatever it is in your
23 good, common sense which causes you to believe
24 one factor over another. You may consider,
25 for instance, the demeanor of a witness, what

1 a person looks like when that person answers
2 questions, whether that person has something
3 to gain or lose by what he or she says. You
4 may ask yourself whether the evidence by one
5 person was corroborated by other evidence; in
6 other words, was it made stronger,
7 corroborated. Or was it made weaker by other
8 evidence, was it contradicted by other
9 evidence?

10 Obviously you don't count witnesses.
11 You can believe one witness when several
12 others testify differently, or you can believe
13 several against one. For that matter, you can
14 believe all of what a person tells you, or
15 part of it, or none of it. But your job is to
16 seek the truth regardless of the source. And
17 of course you give the benefit to this
18 defendant of every reasonable doubt in that
19 process.

20 Ladies and gentlemen, the fact that
21 a defendant does not testify in his own behalf
22 at any stage cannot and must not be held
23 against him in any way. He has the
24 constitutional right to remain silent. He's
25 not required to come, even at this stage in

1 the process, and testify. The burden is not
2 on the plaintiff -- on the defendant to prove
3 anything at all. The burden is on the State
4 in this instance to prove the existence of
5 aggravating circumstances, if it can.

6 So the fact that a defendant does
7 not testify in his own behalf simply cannot
8 and must not be held against him in any way
9 because he does not have a burden of proof, he
10 doesn't have anything to prove. And when he
11 invokes his constitutional right you cannot
12 require him to do otherwise. It would be
13 improper for you all to even consider the fact
14 that he didn't testify in this stage of the
15 proceeding.

16 As a matter of fact, I will tell you
17 now not to even discuss the fact that he did
18 not testify in his own behalf at this stage
19 if, in fact, he does not testify. Because he
20 has no reason to testify, he has no burden of
21 proof.

22 I have spoken of experts probably
23 three or four times during the course of this
24 trial. And I told you all earlier that the
25 rules of evidence don't allow people,

1 laywitnesses, generally speaking, to come and
2 give their opinions, they're not allowed to do
3 that. They can tell you what they know from
4 their own senses and so forth. But experts
5 are, of course, allowed to give their opinion
6 because of their training and their
7 experience, and their knowledge, their
8 education and so forth. And they are allowed
9 to do that because generally speaking you or I
10 don't really know about the things that they
11 speak for the most part. And so they're
12 allowed to give their opinions to help you,
13 and for that matter to help me understand what
14 it is that they have found.

15 But, ladies and gentlemen, you
16 should consider the expert opinion in this
17 case and certainly consider all of the
18 witnesses who testified here. But just
19 because a person is an expert doesn't mean
20 that you have to accept their opinion as being
21 correct or true. Obviously you have to
22 consider that person's experience and
23 educational background and any other bias or
24 prejudice that that person may have, any other
25 thing which goes into your analysis of

1 anybody's testimony for that matter, and you
2 give it the weight that you feel expert
3 opinion deserves.

4 You all are the judges of the facts
5 of the case, I'm the judge of the law, and
6 that means that you are required to take the
7 law that I give to you as correct and apply it
8 as you find the facts to be.

9 You know, I told you before, I
10 cannot indicate that I've got any opinion
11 about the facts of the case. And I have done
12 my very best throughout this trial to remain
13 fair and impartial. You may have noticed that
14 a good portion of the time I haven't even --
15 you know, I haven't even looked toward the
16 witnesses or toward the lawyers, but basically
17 have sat here quietly and tried to occupy
18 myself by taking notes or doing other things.

19 I don't have the right to give you
20 my opinion or tell you what I think, and I
21 have tried as best I could to not indicate any
22 opinion on my part.

23 I've made a few rulings, just a very
24 few rulings in your presence. Do not read
25 anything into my ruling. I have to call it

1 the best I can under the circumstances and I
2 have tried as best I could to be fair and
3 impartial. But don't read, don't read
4 anything into my ruling because I may have
5 made a mistake. Again, I have certainly not
6 intended to do so, but you all are the judges
7 of the facts, I'm the judge of the law, and so
8 you take the law that I give to you and you
9 apply it to the facts as you find the facts to
10 be.

11 There are two kinds of evidence in
12 South Carolina, we have what we call direct
13 evidence and circumstantial evidence. Direct
14 evidence basically is evidence which comes
15 from a person who has -- who claims to have
16 actual knowledge of a fact, such as an
17 eyewitness, person who says, you know, I saw
18 someone, for instance, walking across a snowy
19 field. Eyewitness testimony, that's an
20 example of direct evidence.

21 Circumstantial evidence is proof of
22 a chain of facts or circumstances indicating
23 the existence of another fact. For instance,
24 someone who comes and says a man walked across
25 this field. Now, of course, he did not see,

1 there was no eyewitness, he did not see that
2 occur, but the fact that there were footprints
3 in the snow indicate to that person that a man
4 walked across the field. And so the proof of
5 other facts tends to prove the fact in
6 existence. And that's just sort of a simple
7 example of circumstantial and direct evidence.

8 The law makes absolutely no
9 distinction between the weight or the value to
10 be given either direct or circumstantial
11 evidence, nor is a greater degree of certainty
12 required of circumstantial evidence than of
13 direct evidence. You should simply consider
14 all of the evidence in the case. And after
15 considering all the evidence, if you're not
16 convinced that the State has proven the
17 existence of an aggravating circumstance
18 beyond a reasonable doubt, then of course you
19 find that the State has failed in that and
20 would sign the appropriate form which I'll
21 talk to you about in a few minutes.

22 Conversely, if you are convinced
23 beyond a reasonable doubt the State has proven
24 at this point the existence of an aggravating
25 circumstance, then of course you should set

1 that out on the form that I will speak to you
2 about in just a few moments.

3 Obviously, proof beyond a reasonable
4 doubt is proof that leaves you firmly
5 convinced of the fact. . Firmly convinced in
6 the formal portion of this trial, firmly
7 convinced of the defendant's guilt. In this
8 stage firmly convinced of the existence of the
9 defendant's guilt in regards to an aggravating
10 circumstance. In other words, during the
11 commission of a murder did the defendant
12 commit the offense of armed robbery and/or did
13 he commit the offense of physical torture?
14 Those are the two aggravating circumstances.

15 And as I say, there are very few
16 things in the world we know with absolute
17 certainty, but the law does not require proof
18 that overcomes every possible doubt.

19 If, based on your consideration of
20 the evidence, you are firmly convinced the
21 defendant is guilty of the crime or
22 aggravating circumstances which I will charge
23 you, then you must find him guilty. On the
24 other hand, if you think there's a real
25 possibility that he is not guilty of the

1 commission of those offenses, then of course
2 the benefit should be given to him and you
3 would find that those aggravating
4 circumstances, one or the other, or both,
5 simply have not been proven and do not exist.

6 Now, let me tell you this: Evidence
7 of prior misconduct -- hear me, hear me
8 well -- evidence of prior misconduct of this
9 defendant should not be considered and may not
10 be considered as used -- be considered by you
11 as proof of any statutory aggravating
12 circumstance. You may consider prior conduct
13 or misconduct of a defendant as it might have
14 some bearing upon his character or the
15 characteristics, for instance, of him, but not
16 as proof of the alleged statutory aggravating
17 circumstance.

18 Now, there are two statutory
19 aggravating circumstances of which I am going
20 to charge. First of all, let me read for you
21 the statute which says this: Statutory
22 aggravating circumstances. The murder was
23 committed while in the commission of the
24 following crime or crimes. And I'm going to
25 list two. Burglary in any degree. And in

1 this case the State alleges that it was
2 burglary in the first degree, that that was
3 one statutory aggravating circumstance. And
4 also physical torture. That is the second
5 aggravating circumstance which the State
6 intends to -- claims that this defendant is
7 guilty of. Those are the only two statutory
8 aggravating circumstances that you may
9 consider in this case.

10 And again, I tell you that any other
11 evidence about this defendant's prior
12 misconduct, or any other evidence in regards
13 to his character and so forth, cannot be used
14 and cannot be considered by you, ladies and
15 gentlemen, to prove either one of those
16 aggravating circumstances. But they may be
17 considered as it might have some bearing upon
18 his character and his characteristics in your
19 deliberation.

20 Burglary in the first degree occurs
21 when a person enters a dwelling without
22 consent with the intent to commit a crime
23 therein, and either while entering or while in
24 the dwelling or while in immediate flight
25 therefrom he is armed with a deadly weapon, or

1 causes physical injury to any person, or uses
2 or threatens to use a dangerous instrument, or
3 displays, displays, shows what appears to be a
4 knife, pistol, revolver, rifle, shotgun,
5 machine gun or other firearm.

6 There are five basic elements to the
7 crime of burglary in the first degree. An
8 entry, that means simply to move from outside
9 inside. Even a small portion of the person's
10 body entering an open door constitutes entry
11 under our law. Entry into a dwelling. A
12 dwelling is a place where people normally live
13 or sleep. Without consent. Obviously without
14 the consent of the person who owns or has the
15 occupancy of that home or dwelling. With the
16 intent to commit a crime therein. Obviously I
17 wouldn't need to explain to you what the word
18 "intent" means. To commit a crime therein.
19 And the fifth is either while entering, while
20 inside, or while in the immediate flight
21 therefrom that person has -- is armed with a
22 deadly weapon, or causes injury while inside
23 to some person, or threatens to use a
24 dangerous instrument, or finally, displays a
25 knife, pistol, revolver, rifle, shotgun,

1 machine gun or other firearm.

2 Now, those are elements of the crime
3 of burglary in the first degree. The State
4 must prove each and every element of that
5 crime of burglary in the first degree beyond a
6 reasonable doubt. If you're not convinced
7 that the State has proved each and every
8 element of that aggravating circumstance
9 beyond a reasonable doubt, then of course you
10 would find that the aggravating circumstance
11 does not exist and you would not list that
12 burglary in the first degree as one of the
13 aggravating circumstances.

14 Now, as to physical torture, that is
15 the second aggravating circumstance, let me
16 give you a definition of torture. Torture
17 occurs when the victim is subjected to serious
18 physical abuse before death. Torture occurs
19 when the victim is subjected to aggravated
20 battery.

21 What is aggravated battery? An
22 aggravated battery is an unlawful act of
23 violent injury to the person of another
24 accompanied by circumstances of aggravation,
25 such as the use of a dangerous or a deadly

1 object, or such as the infliction of a serious
2 bodily injury with the intent to commit a
3 felony, or such as a great disparity between
4 the ages and physical condition of the
5 parties, or for that matter a difference in
6 the sexes.

7 Physical torture is the intentional,
8 the intentional infliction of serious, vile,
9 horrible, or inhuman abuse upon the body of
10 another before death. The instantaneous death
11 of the victim does not constitute torture.

12 Physical torture may include the
13 malicious infliction of bodily harm to another
14 by depriving her of a member of her body, or
15 by rendering a member of her body useless or
16 by seriously disfiguring her body or a member
17 of her body, or the intentional and unmerciful
18 prolonging of severe pain and abuse upon the
19 body, or the intentional and unmerciful
20 infliction of serious and extensive physical
21 pain and abuse to the body of another. Now,
22 that is the definition of physical torture.

23 And in this instance, of course, the
24 State must prove that this defendant
25 inflicted, intentionally inflicted, serious,

1 vile, horrible inhuman abuse upon the body of
2 another before death and so forth as I have
3 just explained.

4 The State's burden is to prove that
5 this defendant inflicted -- while in the
6 commission of a murder inflicted before death,
7 obviously, physical torture. Instantaneous
8 death, if that were the case, there would be
9 no physical torture involved.

10 Now, ladies and gentlemen, let me
11 tell you this: No statement made by a
12 defendant constitutes evidence against that
13 defendant unless that statement is freely and
14 voluntarily given by him. In other words, a
15 statement given by a defendant cannot be
16 considered evidence against him unless that
17 statement were given by him freely and
18 voluntarily.

19 In order to determine whether a
20 statement was given freely and voluntarily,
21 you have to look to the totality of the
22 circumstances surrounding that statement,
23 whether it be an oral statement, a taped
24 statement, a written statement it makes no
25 difference. You look to the totality of the

1 circumstances. And you might consider whether
2 or not any reward, or hope of reward was
3 given, whether there were any threats of
4 violence or other kinds of threats made
5 against this defendant in order to obtain some
6 statement from him.

7 You may consider the advice or the
8 lack of advice of what we commonly call
9 Miranda, whether or not that -- the fact that
10 the defendant had the right to remain silent,
11 the fact that he had the right not to give a
12 statement, the fact that he had the right to
13 have a lawyer present at the time the
14 statement was made and that he had the right
15 that if he gave a statement that it be used
16 against him in a court of law, may be used
17 against him in a court of law. The fact that
18 he had a right to stop the proceedings at any
19 time.

20 And so you simply look to the -- to
21 all of the attending circumstances of the
22 statement thus given and determine whether or
23 not even if those rights were given, whether
24 he understood those rights; in understanding
25 them he voluntarily, knowingly, intelligently

1 waived, gave up those rights and gave a
2 statement. Only then can you use the evidence
3 which comes from those statements as evidence
4 to prove the existence of some crime or some
5 offense or some aggravating circumstance in
6 this case.

7 Now, ladies and gentlemen, the
8 manner in which I explain these two sentences
9 to you in no way reflects how I feel, we have
10 to start with one and end with another. I
11 have no reason to start with one more than the
12 other, flip a coin, and that's the way that
13 I'm going to give these sentences to you.
14 Please don't read anything into the fact that
15 I start with one and end with another.

16 What I have here is a form which
17 will be sent to your jury room. And what it
18 says is "Recommendation of Sentence of Death
19 Penalty, County of Dorchester, State versus
20 John Edward Weik, defendant. Recommendation
21 of Sentence of Death Penalty."

22 Ladies and gentlemen, that word
23 "recommendation" is going to be the sentence.
24 There will be no mistake about it. You may
25 recommend it. Your recommendation is going to

1 be my order. Whatever you recommend is the
2 sentence regardless. And so I do not want you
3 to be misinformed or misunderstand that I've
4 gotten the word "recommendation." It doesn't
5 mean that I might follow it, it means that I
6 will follow it.

7 "Recommendation of the Sentence of
8 Death Penalty. We, the jury, in the above-
9 entitled case, having found beyond a
10 reasonable doubt the existence of the
11 following aggravating circumstances, to-wit:"
12 and then some lines, "now recommend to the
13 Court that the defendant, John Edward Weik, be
14 sentenced to death."

15 Now, ladies and gentlemen, obviously
16 you may not even consider signing your names,
17 which you all must do to this form if this is
18 your verdict, you may not consider doing so
19 unless you find the existence of at least one
20 of those two aggravating circumstances. You
21 may find both. But if you find one you may
22 consider sentencing this defendant on this
23 form to death.

24 Let me tell you this, let me be very
25 clear, even if you find the existence of one

1 or both aggravating circumstances you are
2 never required, never required to give a
3 defendant a death sentence. Simply is not a
4 requirement under the law. There is no
5 requirement for a death sentence. So even if
6 you find the existence of both aggravating
7 circumstances, or one or the other, you must
8 list those on this sheet, on this form, but
9 you are not required, you are not required to
10 sentence this defendant to death even if you
11 find both aggravating circumstances existing.

12 Now, your decision in that regard
13 must be unanimous, as I've said, all 12 of
14 must agree, all 12 of you must sign your names
15 to that form if that is your decision.

16 Now, ladies and gentlemen, what is
17 the statutory aggravating circumstance? I've
18 given the two to you, I've given the
19 definitions to you. What is an aggravating
20 circumstance? It is a fact, an incident, a
21 detail, or an occurrence which the South
22 Carolina General Assembly has declared by
23 statute to make worse, that is to aggravate,
24 the offense of murder when the two occur
25 together. In other words, it is something

1 which increases enormity or adds to the
2 injurious consequence of the offense.

3 Now, ladies and gentlemen, what I'm
4 going to do is send to your jury room
5 something I have in my hand called "Statutory
6 Instructions." And here's what it says: "In
7 determining whether to recommend that the
8 defendant, John Edward Weik, be sentenced by
9 the Court to life imprisonment or to death,
10 you may consider the following statutory
11 aggravating circumstances: Number one,
12 burglary in the first degree; number two,
13 physical torture." Those are the only two
14 aggravating circumstances you may consider.
15 Only those two.

16 If you find the existence -- excuse
17 me. If you do not find the existence of an
18 aggravating circumstance, that is to say if
19 you are unable to unanimously agree on the
20 existence of any aggravating circumstance, I
21 have a form which says, Mr. Foreman, "No
22 Finding of Aggravating Circumstance. We, the
23 jury, in the above-entitled case, are unable
24 to unanimously agree on the existence of any
25 aggravating circumstances." And if that be

1 your verdict, then, Mr. Foreman, you would
2 sign that form yourself and your deliberations
3 would end there. There would be no sentence
4 if the jury finds no, no aggravating
5 circumstances exist.

6 The only way this jury would
7 sentence this defendant either to life or to
8 death is if you find the exitance of at least
9 one aggravating circumstance. If you find no
10 aggravating circumstance exists, your
11 deliberations end at that point and you would
12 return to the courtroom.

13 On the form entitled "Aggravating
14 Circumstances," I just talked to you about
15 this form, "We, the jury, in the above-
16 entitled case, find beyond a reasonable doubt
17 the following statutory aggravating
18 circumstances:" Ladies and gentlemen, if you
19 find the existence of an aggravating
20 circumstance, statutory aggravating
21 circumstance, one or the other or both, you
22 need to list those two aggravating
23 circumstances on this form that's entitled
24 "Aggravating Circumstances" and all 12 sign
25 that form.

1 So there are two forms in which I
2 ask all jurors to sign their names. One is if
3 you find the existence of an aggravating
4 circumstance, I need to know what aggravating
5 circumstance you have found. If both, you
6 simply write both, but I have to know which
7 ones they are. And all 12 have to agree, has
8 to be a unanimous decision.

9 And even if you find that
10 aggravating circumstance exists, you are not
11 required to sign the other form with 12 names
12 which say we sentence this defendant to death,
13 even if you find aggravating circumstances
14 exist. The law does not require a jury to
15 automatically give anyone a death sentence
16 even when aggravating circumstances are found.

17 Now, in regards to the other forms,
18 as to life in prison, this form says
19 "Recommendation of Sentence of Life
20 Imprisonment. We, the jury, in the above-
21 entitled case, recommend to the Court," and
22 again, the recommendation is what the Court is
23 going to follow. There will be no difference
24 in what you recommend and what this Court is
25 going to order. "We recommend to the Court

1 that the defendant, John Edward Weik, be
2 sentenced to life imprisonment."

3 And again, Mr. Foreperson, you would
4 sign your name. Your verdict has to be
5 unanimous, all 12 of you must agree as to the
6 sentence of life imprisonment.

7 Let me say this: There are three
8 conditions which you would consider in
9 reaching your decision for life. Whether the
10 existence of a statutory mitigating
11 circumstance was supported by the evidence;
12 secondly, whether the existence of any other
13 non statutory mitigating circumstance was
14 supported by the evidence; or third, whether
15 for any reason you can think of, or for no
16 reason at all, the defendant should be
17 sentenced to life imprisonment.

18 In other words, on the form which
19 I'm going to submit to you called "Statutory
20 Instructions" you will recall that I said in
21 determining whether or not to recommend John
22 Edward Weik be sentenced to life or to death
23 you would consider these two aggravating
24 circumstances, just below that you may also
25 consider the following mitigating

1 circumstances. And these are statutory
2 mitigating circumstances. And here they are,
3 I've listed four of these:

4 The defendant -- Number one, the
5 defendant has no significant history of prior
6 criminal convictions involving the use of
7 violence against another person. That's one
8 statutory mitigating circumstance. Two, the
9 murder was committed while the defendant was
10 under the influence of mental or emotional
11 disturbance, that's the second one. Number
12 three, the capacity of the defendant to
13 appreciate the criminality of his conduct to
14 conform to the requirements of law was
15 substantially impaired. And number four, the
16 age or mentality of the defendant at the time
17 of the crime. Those are four statutory
18 mitigating circumstances.

19 Now, what are statutory mitigating
20 circumstances? I've told you what they are,
21 it's a fact, an instance, a detail, or an
22 occurrence the South Carolina General Assembly
23 has required by statute would reduce the
24 severity of the offense of murder. In other
25 words, it is the circumstance recognized by

1 law, by statute, as one which in fairness and
2 mercy may be considered as extenuating or as
3 reducing the degree of moral culpability for
4 the commission of the act of murder.

5 A mitigating circumstance is neither
6 justification nor excuse for the murder, it
7 simply lessens the degree of one's guilt, that
8 is makes him less blameworthy or less
9 culpable. What statutory mitigating
10 circumstances should you consider in this
11 case? You should consider only those four
12 which I have specifically stated and spelled
13 out on these statutory instructions.

14 And, ladies and gentlemen, in
15 addition to those four statutory mitigating
16 circumstances, you also may consider any non
17 statutory mitigating circumstances. In other
18 words, there may be circumstances beyond those
19 set out here as statutory mitigating
20 circumstances, we commonly refer to them as
21 non statutory mitigating circumstances. You
22 may consider any of those in determining
23 whether to impose a life sentence.

24 And then in addition to that as I
25 say, you may simply recommend a life sentence,

1 sentence the defendant to a life sentence
2 yourselves, that's what you're going to be
3 doing if you choose for no reason at all, for
4 no reason, or for any other reason.

5 Now, ladies and gentlemen, if you
6 find the existence of aggravating
7 circumstances, statutory aggravating
8 circumstances, one or both, or both, and if
9 you find the existence of statutory mitigating
10 circumstances, one or more, the finding of
11 mitigating circumstances does not prevent you
12 from finding the defendant should be sentenced
13 to death.

14 On the other hand, the fact that you
15 find only statutory aggravating circumstance
16 and no statutory mitigating circumstances, or
17 for that matter no mitigating circumstances at
18 all, you are still permitted to sentence this
19 defendant to life. So the fact that you find
20 one or more aggravating or mitigating
21 circumstances does not require you to sentence
22 the defendant in any fashion whatsoever.
23 There's simply circumstances which you should
24 consider before you determine what the
25 appropriate sentence should be.

Let me just summarize and be sure I've done this properly. I'm going to send you five forms to your jury room. The first is "Statutory Instructions." And these instructions simply says in determining whether to recommend that the defendant serve either life or be given the death sentence the following you may consider is statutory aggravating circumstances, and I list two. You may also consider the following statutory mitigating circumstances, and I list four. And in addition to that you will see at the bottom you may also consider any non statutory mitigating circumstances. And so those are what you would consider in order to determine whether the defendant should be sentenced to life or to death.

Again, if you find no aggravating circumstances exist; in other words, form two says no finding of aggravating circumstances, and if you all are not unanimous in your agreement as to the existence of at least one aggravating circumstance, then, Mr. Foreman, you would simply sign your name to this form and your deliberations stop, there is no

1 sentence to be imposed.

2 If, however, you find there is a
3 statutory aggravating circumstance and that
4 finding is unanimous, then form three.

5 "Aggravating Circumstances: We, the jury,
6 find beyond a reasonable doubt the following
7 aggravating circumstances." You would list
8 what those aggravating circumstances are, one
9 or two, or both. All 12 individuals must sign
10 their name to that form.

11 And then form four, I'll just take
12 these a little out of order this time so that
13 you'll understand, that even if you find an
14 aggravating circumstance you may recommend a
15 sentence of life imprisonment, in which case
16 "We, the jury, recommend the defendant be
17 sentenced to life imprisonment." The foreman
18 signs that name, his name to that.

19 If, however, you find at least one
20 aggravating circumstance and you determine the
21 defendant should be sentenced to death, then
22 the fifth form is "We, the jury, in the
23 above-entitled case, having found beyond a
24 reasonable doubt the following aggravating
25 circumstances" -- and again, you have to list

1 those two, or one, or which -- one or both --
2 "recommend that the defendant, John Edward
3 Weik, be sentenced to death." And all persons
4 must sign their name to that form.

5 And I want, again, to repeat, your
6 recommendation is the sentence, you are the
7 judge, you are the sentencer. I will follow
8 whatever recommendation, since that word is on
9 the form, you all make. If you sentence the
10 defendant to death. You must assume that the
11 sentence will be carried out. If you
12 recommend a life imprisonment, ladies and
13 gentlemen, he will be sent to prison for life
14 without the possibility of parole.

15 In considering whether to recommend
16 to the defendant life or death, I charge you
17 that you are not to allow any passion,
18 prejudice, or other arbitrary factor to
19 influence your judgment. As jurors you must
20 decide the issues involved in this proceeding
21 without bias and without prejudice to any
22 party. You cannot allow yourselves to be
23 governed by meer sympathy, by prejudice, by
24 passion or by public opinion. Both the State
25 and the defendant have the right to expect

1 that each of you will carefully and
2 impartially consider all the evidence in the
3 case and you will follow the law as I've given
4 it to you in determining your recommendation.

5 You all have been selected as fair
6 and impartial jurors in this case, sworn to
7 partially -- impartially try and determine the
8 facts. And when you comply with your oath, no
9 one in this courtroom will have the right to
10 complain and you will have fully discharged
11 your duty as jurors.

12 Ladies and gentlemen, I'm going to
13 ask the two of you, the two alternates,
14 please, if you would to follow the agent here
15 to the bailiff and let him seat you. The rest
16 of you I would ask you, please, to return to
17 your jury room.

18 Do not begin your deliberations
19 until I talk with these lawyers. Once I talk
20 to them I may have to bring you out, I may
21 have forgotten something, you know, it's
22 pretty difficult to keep all this business
23 completely straight. A missed word would be
24 tragic. I certainly don't want to give you
25 anything by mistake or misspeak in any way.

1 So if you don't mind, step to your jury room
2 for just a minute, don't begin deliberation.
3 If I don't have anything else, I'll send you
4 word to begin.

5 (Jury excused.)

6 THE COURT: Any additions or exceptions
7 from the State?

8 MR. BAILEY: No, sir. I'm not sure
9 whether I just missed it or not, they said
10 they heard it and I didn't, but after you
11 instructed the jury that the verdict for the
12 death penalty has to be unanimous I didn't
13 hear you at any point say the verdict
14 regardless of what it was had to be unanimous.

15 THE COURT: I did. I did not say it at
16 that point. When I got through talking about
17 a life sentence I said your verdict has to be
18 unanimous.

19 MR. BAILEY: Okay.

20 THE COURT: I'm satisfied I said that.

21 MR. BAILEY: That's all I have.

22 MR. BEAUFORD: Your Honor, I think for
23 clarification, I think you told the jury if
24 they don't agree that aggravated then no
25 sentence is to be imposed.

1 THE COURT: That's correct.

2 MR. BEAUFORD: I think from basing it on
3 that they're thinking maybe the defendant
4 would be not --

5 THE COURT: No, no. Well, what do you
6 want me to tell them?

7 MR. BEAUFORD: That the Court itself will
8 impose sentence.

9 THE COURT: I'm sure they got that much
10 sense. All I said was just stop -- what I did
11 say that you all wouldn't sentence -- stop
12 your deliberations if you don't find -- if you
13 return to the courtroom I think is what I
14 said. You tell me what you would like for me
15 to tell them in that regard.

16 MR. BEAUFORD: If they don't agree to any
17 aggravated then the Court will impose
18 sentence.

19 THE COURT: You got a problem with me
20 telling them that?

21 MR. BAILEY: Yes, sir. I think that's
22 going to confuse them. I think you correctly
23 instructed them. If they just don't go any
24 further, then it's a matter of law for the
25 Court if they reach that point.

1 MR. BEAUFORD: The only thing about that,
2 Your Honor, I guess my notes suggested that
3 you worded it there is no sentence to be
4 imposed.

5 THE COURT: Right, not by them. They're
6 not going to be imposing a sentence. What I
7 said is you're not going to impose any
8 sentence.

9 MR. BEAUFORD: Right. You left it as
10 that so I think they may get confused.

11 THE COURT: Well, surely they know that
12 somebody is going to impose one at that point.
13 I tell you, I'm following a form as best I
14 could. Of course I don't do it exactly like
15 every other judge, I guess we do it all
16 differently, but I've followed a form that's
17 been approved time and time again. I'm
18 satisfied that I spoke in that regard
19 correctly. You know, I guess you could always
20 bring them back and tell them one other thing,
21 but surely, surely you've told them that, that
22 he's going to be sentenced, so surely they
23 don't think that you find somebody guilty of
24 murder in this state and if they don't
25 recommend, find an aggravating circumstance,

1 that he would go home. I just don't believe
2 they could do that.

3 MR. BEAUFORD: The only difference in
4 that, Your Honor, you're the judge of the law,
5 I'm just -- nothing I say is evidence.

6 THE COURT: I understand that. But I
7 believe I've covered that pretty well, sir.

8 Anything else you all can think of?

9 MR. BAILEY: Not from the State, Your
10 Honor.

11 MR. BEAUFORD: Nothing further.

12 THE COURT: All right. Let's tell them
13 to begin the deliberation. But before we do
14 that, I want you all to come look at these
15 forms again. I want to be sure when these
16 forms go back there -- and by the way, the
17 indictment of course does not go back, I
18 wouldn't dare send the indictment back, but I
19 didn't say anything about it. These things
20 here are done, Hugh did these things in hand,
21 those one or two. I don't think there's a
22 problem with those three. Now this one has
23 been typed, let's go with this one first.

24 There's the one that's been typed
25 with all four, two and four and then the

1 sentence is at the bottom, any non statutory.
2 Any problems with those forms?

3 MR. BEAUFORD: None from the defense,
4 Your Honor.

5 MR. BAILEY: None from the State.

6 THE COURT: All right.

7 MR. BAILEY: Judge, could we get the
8 exhibits together before they're told to start
9 deliberating?

10 THE COURT: Yes, sir. Absolutely.

11 MR. BAILEY: I want to pull those yellow
12 stickers off of there just for my benefit.
13 Are you going to advise the jury that lunch
14 will be sent for, or just let them wait, or
15 supper?

16 THE COURT: That's the other thing, I did
17 not tell them anything, need to knock when
18 they found a verdict. I suppose I probably
19 ought to bring them back and tell them that.
20 Or either just have the bailiff when he goes
21 out and hands the exhibits to them say when
22 you reach a verdict knock. I don't see how
23 that can cause a problem.

24 MR. BEAUFORD: I guess the other thing
25 you're talking about lunch, supper, or dinner.

1 THE COURT: We can do that any way you
2 all want. If you want me to have the clerk or
3 the bailiff when he carries the exhibits in
4 just simply say, "When you all wish for us to
5 order your supper, let us know," would that be
6 all right?

7 MR. BEAUFORD: Yes, Your Honor.

8 MR. BAILEY: Yes, sir.

9 (Whereupon, the jury begins deliberation
10 at 6:30 p.m.)

11 THE COURT: All right. Thank you. Be
12 seated. 6:20 by that clock on the wall --
13 excuse me, 7:22 as I see it by the clock. I
14 understand we got a verdict, I believe the
15 jury went out at 6:30 if I'm not mistaken. We
16 can bring the jury.

17 Ladies and gentlemen, I don't want
18 to hear anything. I don't care what this
19 verdict is, I don't want to hear a word.

20 MR. WEIK: Your Honor, may I apologize
21 before you even get a verdict in, sir?

22 THE COURT: You can certainly speak.
23 After the verdict I'm going to let you say
24 anything you want to say afterwards.

25 MR. WEIK: Okay, sir. I just want to

1 apologize to everybody here.

2 THE COURT: I understand, sir. I'm going
3 to let you say anything you want to say
4 regardless of what it is.

5 MR. WEIK: Yes, sir.

6 (Whereupon, the jury returned to open
7 court to report its verdict at 7:22 p.m.)

8 THE COURT: All right, ladies and
9 gentlemen, my understanding is you all have
10 reached a verdict?

11 MR. MCGUIRE: Yes, we have.

12 THE COURT: Pass it up please, sir. Is
13 your verdict unanimous?

14 MR. MCGUIRE: Yes, sir. It is.

15 THE COURT: All right.

16 THE CLERK: In the State versus John
17 Edward Weik. We, the jury, in the
18 above-entitled case, find reasonable (sic)
19 doubt the following statutory aggravating
20 circumstances: Burglary in the first degree
21 and physical torture. And these were signed
22 by all the jurors. (As read.) They are
23 Ronald McGuire, Donald Wiggins, Daisy Small,
24 Jaime Bele, Randal L. Tinnell, Jerry E. Bryan,
25 Scott D. Atcherson. I can't read that one.

Marion...?

MR. LADSON: Marvin.

THE CLERK: Marvin.

MR. LADSON: Ladson.

THE CLERK: Ladson, thank you.

Johnny Britt, Douglas M. --

MR. JUDY: Douglas W. Judy.

THE CLERK: Douglas Judy, Carolyn
Kirkland and Sarah M. Horne.

In the State versus John Edward Weik. We, the jury, in the above-entitled case, having found beyond a reasonable doubt the existence of the following statutory aggravating circumstances, to-wit: burglary in the first degree and physical torture, now recommend to the jury -- to the Court that the defendant, John Edward Weik, be sentenced to death. Foreperson, Ronald McGuire.

MR. WIGGINS: Dane.

THE CLERK: Dave?

MR. WIGGINS: Dane.

THE CLERK: (As read.) Dane Wiggins,
Scott D. Atcherson, Daisy Smalls, Jaime Bele,
Ronald L. Tinnell, and Jerry E. Bryant, Marvin
E. Ladson, Johnny B. Britt. What's that next

1 one? I can't read it.

2 THE COURT: Let me see it. It's Mr.
3 Judy.

4 THE CLERK: Is that Douglas Judy?

5 MR. JUDY: Yes, ma'am.

6 THE CLERK: Carolyn Kirkland and Sarah M.
7 Horne.

8 THE COURT: Is that your verdict, so say
9 you all?

10 (All jurors indicate in the affirmative.)

11 THE COURT: Ladies and gentlemen, you all
12 will be asked now to state whether or not that
13 sentence was your verdict, and is it still
14 your verdict. Each one individually will be
15 asked that, and you need to answer one way or
16 the other.

17 BY THE CLERK:

18 Q. Ronald L. McGuire, was this your verdict?

19 A. Yes, it is.

20 Q. Is it still your verdict?

21 A. Yes, it is.

22 Q. Don?

23 A. Dane.

24 Q. Dave Wiggins, was this your verdict?

25 A. Yes, ma'am.

1 Q. And is it still your verdict?

2 A. Yes, ma'am.

3 Q. Robert S. Atcherson, was this your
4 verdict?

5 A. Yes, ma'am.

6 Q. And is it still your verdict?

7 A. Yes, ma'am.

8 Q. Daisy Smalls, was this your verdict?

9 A. Yes, ma'am.

10 Q. And is it still your verdict?

11 A. Yes, ma'am.

12 Q. Jaime M. Bele, was this your verdict?

13 A. Yes, ma'am.

14 Q. And is it still your verdict?

15 A. Yes, ma'am.

16 Q. Ronald L. Tyrell, was this your verdict?

17 A. Yes, ma'am.

18 Q. And is it still your verdict?

19 A. Yes, ma'am.

20 Q. Jerry E. Bryan, was this your verdict and
21 is it still your verdict?

22 A. Yes, ma'am.

23 Q. Marvin E. Ladson, was this your verdict
24 and is it still your verdict?

25 A. Yes, ma'am.

1 Q. Johnny B. Britt, was this your verdict?

2 A. Yes, ma'am.

3 Q. And is it still your verdict?

4 A. Yes, ma'am.

5 Q. Douglas Judy, was this your verdict and
6 is it still your verdict?

7 A. Yes, ma'am.

8 Q. Carolyn S. Kirkland, was this your
9 verdict and is it still your verdict?

10 A. Yes, ma'am.

11 Q. Sarah M. Horne, was this your verdict?

12 A. Yes, ma'am.

13 Q. And is it still your verdict?

14 A. Yes, ma'am.

15 THE COURT: All right. The jurors have
16 been polled.

17 Anything further for the jury at
18 least for this stage?

19 MR. BAILEY: Not from the State, Your
20 Honor.

21 MR. BEAUFORD: Not from the defense, Your
22 Honor.

23 THE COURT: All right. You can be seated
24 at this point in time, we'll talk.

25 Let me take all posttrial motions at

1 this time, if you don't mind. Just renew all
2 motions and make whatever motions you feel you
3 need to make at this time, please, sir.

4 **MR. BEAUFORD:** Yes, Your Honor.

5 Basically the first motion is that I would
6 move for new trial, JNOV, or in the
7 alternative for a new trial. Basically during
8 the trial there was a motion made or request
9 made for the charge of manslaughter. And
10 during that time the Court denied to make that
11 charge and we feel that the evidence was
12 consistent, there was some evidence of that
13 charge and the Court denied that motion and
14 basically move for a new trial on that matter.

15 **THE COURT:** All right, sir. I'm going to
16 respectfully deny. I, of course, considered
17 that thing at length at the time and have
18 thought about it a great deal since and am
19 satisfied under the situation here of the
20 facts of this case that there was no evidence
21 from which this jury could have found -- first
22 of all, could have found that there was any
23 threat made which would -- in which this
24 victim could have had the present ability to
25 carry out that threat.

1 For her to say that you're not going
2 to ever see the child again is not the kind of
3 threat under the law. First of all, she
4 didn't have the present ability to carry that
5 threat out and it's not the kind of threat
6 which lends itself to a charge on voluntary
7 manslaughter.

8 In addition to that, and while there
9 may be a little evidence at some point in time
10 in regards to someone who kills in a sudden
11 heat of passion, of course that cooling off
12 period is one of the things that the jury
13 would have to consider. And even if you had
14 the evidence in regards to the threat made,
15 which I emphatically know that you do not, but
16 even if you did under the evidence that I
17 heard there really was a sufficient -- and I
18 could almost find as a matter of law that
19 there was a sufficient cooling off period. I
20 realize that that's generally a question for
21 the jury to determine.

22 The only reason I say that is when I
23 consider the testimony of the -- of Mr. Weik
24 himself when he said I went to the car and I
25 said, or I thought basically, 20 years, life

1 sentence, death penalty, what difference does
2 it make, to me it impressed upon me the fact
3 that he weighed the alternatives that he had.
4 Unlike the common case where you have a
5 killing in the sudden heat of passion, someone
6 simply is provoked and without even much
7 thought at all just pulls a trigger or stabs
8 or whatever. That just wasn't the case and I
9 would respectfully deny your motion for a new
10 trial or a judgment notwithstanding the
11 verdict in regards to the failure of the Court
12 to charge on manslaughter.

13 MR. BEAUFORD: Your Honor, I would like
14 to renew all my prior evidentiary motions.

15 THE COURT: And of course you need to do
16 that. And in renewing all prior motions,
17 motions, for instance, in regards to the
18 statement, the voluntariness of the statement
19 and all of that business that we handled last
20 week and other motions that you made this week
21 and you should -- you should and you have
22 renewed all your motions and asked for a new
23 trial or judgment NOV in regards to those.
24 And I respectfully deny because I feel that
25 we've, you know, considered thoughtfully and

1 followed the law in regards to each of those
2 motions and I'm satisfied that the case was
3 properly before the jury on all the issues
4 that the law would allow it to be heard by
5 this jury. Thank you, sir.

6 MR. BEAUFORD: Thank you, Your Honor.

7 THE COURT: All right. All right. You
8 may bring Mr. Weik around. He's got the right
9 to say anything he'd like to say.

10 Solicitor, do you need -- at this
11 point do you need to address the Court any
12 from your perspective?

13 MR. BAILEY: No, sir, Your Honor.

14 THE COURT: All right, sir. All right.
15 Well, I'm glad to hear from the defendant,
16 from you, Mr. Beauford, or Ms. Hardee-Thomas.
17 And, Mr. Weik, of course you've got the right
18 to say anything you'd like to say, I'll be
19 glad to hear from you.

20 MR. WEIK: Yes, sir. Yes, sir. I
21 apologize to your court and yourself, sir, for
22 taking up your time. You're very fair in your
23 judgment and I apologize to each and every one
24 of you jurors for taking out time to make
25 justice. Each one of you all should be proud

1 of yourselves, you take justice. You don't
2 know how gruesome it was that I put you
3 through. You all did you all's job very well.

4 And to the family that I hurt very
5 much, Susan's family, I apologize to all of
6 them, each and every one of you all. And I
7 know that this loss is devastating. There's
8 no winners in this situation here, only
9 losers. One of the greatest losses or effects
10 will be my son's life itself. His mother's
11 gone now and I will soon -- be greeting her
12 soon.

13 We all sometimes must make our
14 choices, we all must live, we all must die.
15 We never know when we're going to die. Death
16 comes sudden, it comes like a thief in the
17 night. Even what I have done I'm very sorry
18 for everything I have done, causing the pain
19 to their family and my family also. I could
20 have took life sentence before court, but
21 instead I wanted to see my son for the last
22 time. I hadn't seen my son in a whole year.
23 It was worth it. It's only death. It's only
24 death. There's still the fact my love will
25 never die for my son. When they strap me in

1 I'll still love my son regardless of the
2 circumstances. I've always loved my son
3 dearly and there's nothing in this world I
4 would do without. I would do without
5 everything in this world just for the love of
6 my son, and I'd give him whatever I possibly
7 could.

8 Even to the circumstances that came
9 upon my behalf prior to this incident for not
10 letting me see my son, I'm always going to
11 love my son and he's always been A-1 priority
12 in my life. Even the prosecutor tends me to
13 be out for this person me, me, me. That's not
14 true. I did everything I possibly could for
15 my son. And every time that she wouldn't let
16 me see my son I would try to find some way,
17 make some way, somehow, give him something for
18 his birthdays or his Christmas. He earned
19 everything.

20 My son was a very worthy child. I
21 wasn't worthy to have his love. He's a child
22 that every dad wants or every mother wants, my
23 son. I never felt that I was worthy of his
24 love. Regardless of what I did,
25 circumstances, you all showed his love to me.

1 My mother, I feel for her because
2 she was denied the presence of my only son
3 from day one, which wasn't right. Even in
4 this court made her look like she was an
5 angel, she wasn't a perfect angel. Neither
6 was I. But that's no circumstance to kill
7 anybody. A life is a life and life is very
8 precious.

9 I will meet my maker soon and I know
10 where I'm going so I'm not really worried
11 about it in the first place. If I was an
12 unsaved person, yes, I would worry about it,
13 but I'm saved. The people over at the jail
14 has been very kind to me, I've had the
15 pleasure of winning four souls to the Lord, I
16 have brought two, helped two, assist two to
17 the Lord. So whatever you think, maybe it was
18 untrue, but still, I still love the Lord
19 regardless of the circumstances, praise his
20 name, for God is great and worthy to be
21 praised.

22 I knew it was a matter of time, it
23 was a matter of time. I knew it was ahead of
24 me. Death is inevitable. Before man
25 starts -- before man's going to die he

1 acquires so much knowledge, and I acquired a
2 lot in this little bit of time. Kind of
3 baffling for a little while, but I kind of
4 figured that death was inevitable.

5 I was a slow learner for a child,
6 never had much, whatever I had I gave away. I
7 have nothing now except my life for the time
8 being, my soul, eternal, everlasting, for
9 Jesus is waiting on me and I know I'll walk
10 the streets of gold in the pearly gates.

11 But my little son, I feel for him,
12 because he has no more daddy and has no more
13 mama. It will always be imitators, but never
14 the real daddy or mama. For a dad's love is
15 everlasting and so is a mother's. It's
16 all-gothia (phonetic) love, love that endures
17 forever. My love will endure forever for my
18 son regardless, regardless of how bad it is.

19 I know I have a hard road waiting
20 ahead of me, and it never is, but I would not
21 like a lethal injection, I'm going to take
22 sparky for I figured I caused the pain and I
23 deserve pain. That's always been my
24 philosophy from day one of this ordeal.

25 I know, I know what you see in the

1 papers, what you see is not always true. I
2 was a bona fide Christian before this thing
3 happened. Just things happen. And people
4 sometimes aren't always what they seem to be.
5 People look good on the outside, but it's
6 what's inside that counts. And you see
7 things, and people when they talk and they
8 walk, the flaws of human -- of being human,
9 for none of us are perfect, for only Jesus
10 Christ is perfect.

11 My job that I did at the church I
12 did every Sunday, not missed any minutes
13 because I loved the Lord very much and I still
14 love the Lord vigorously to this day. And I
15 will love the Lord until they strap me in
16 because I know, I know if there is a will
17 there is a way and through Jesus Christ there
18 is the way.

19 I've always had problems my entire
20 life, but with death there is no problems,
21 there's no more pain, there is no suffering.
22 I didn't want to cause my mother no pain at
23 all, I truly didn't. I didn't want to cause
24 her family any pain or suffering, but I did.
25 It's just like dropping a little pebble in a

1 pond, waves go out, waves come back.

2 I always took responsibility. I
3 told the jury I killed her, didn't I? Each
4 and every one of you all, I never denied it.
5 But as far as murder, I didn't murder her.
6 But you know what? Death is death. I took a
7 life. By Mosaic law I deserve to have my life
8 taken.

9 People would say that we should have
10 an eye for an eye, a tooth for a tooth. But I
11 always figured that my life, I took a life. I
12 know, I know how cruel it sounds, but that's
13 our society, it's our rules we have to live
14 by. Each and every one of you all have to
15 live by these rules and responsibilities, each
16 and every one of you. The court system is
17 made for society, good people, good,
18 hard-working people, taxpayers who deserve
19 justice. And justice has been done. Thank
20 you very much for justice.

21 But I wanted my day in court. I
22 know I could have took a plea out of court and
23 nothing would have happened, I would have been
24 life in prison, but I never would have seen my
25 son again because of principalities. It was

1 worth it, it truly was worth it. For I know
2 each and every one of you all probably would
3 have did the same thing for your child.

4 For children are precious, more
5 precious than any gem, any amount of money,
6 any mineral on this earth. And I had a very
7 precious child, a very, very precious child
8 indeed. He was great, he still is. He was a
9 straight A student which made me proud.

10 I'm very sorry we had to all meet
11 under these circumstances today. I know what
12 I have done wasn't what I used to be, but, the
13 word "but," thank you very much for justice.
14 Thank you and God bless you all.

15 THE COURT: Thank you, sir. All right.
16 Anybody else? I would be glad to hear from
17 anyone.

18 MR. BEAUFORD: No, Your Honor.

19 THE COURT: Hold it right there. Let me
20 say that as the trial judge in this action and
21 prior to the imposition of this sentence I
22 find as an affirmative fact the evidence in
23 this case warrants the imposition of the death
24 penalty and its imposition is not a result of
25 prejudice, passion, or any other arbitrary

1 fact.

2 I have watched this jury for one
3 thing intently, as I have everybody else in
4 this courtroom. And while there was one or
5 two moments in this trial when emotion seemed
6 to take over, I can say absolutely that this
7 jury has listened to this case and has not
8 shown me any emotion to the extent that I feel
9 their sentence is a result of prejudice,
10 passion, or any other arbitrary factor.

11 Let me ask the jury -- let me ask
12 each juror, Madam Clerk, if you would do this,
13 please, again. Ladies and gentlemen of the
14 jury, as she calls your name I wish you would
15 stand again and tell me that you have or have
16 not found the aggravating circumstance of
17 physical torture and the aggravating
18 circumstance of burglary first degree beyond a
19 reasonable doubt. I know that you've said
20 that on your form, but I want each of you to
21 answer that question if you will. Was that
22 your decision in regards to that aggravating
23 circumstance and is it still your decision.

24 THE CLERK: Ronald McGuire, was this
25 your --

1 THE COURT: Decision.

2 THE CLERK: -- decision to -- I didn't
3 hear what you said.

4 THE COURT: Was it your decision in
5 finding both aggravating circumstances and is
6 it still your decision.

7 MR. MCGUIRE: Yes, it is.

8 THE COURT: Just each juror, they can say
9 yes or no.

10 THE CLERK: Yeah.

11 BY THE CLERK:

12 Q. Douglas Judy, was this your decision --

13 THE COURT: Still your decision, sir?

14 BY THE CLERK:

15 Q. And is it still your decision?

16 A. Yes, ma'am.

17 Q. Robert -- I can't --

18 THE COURT: Why don't we get the jury
19 list, that's all we need is the regular jury
20 list.

21 THE CLERK: Yeah, I need to find that.

22 See if I can find the same place.

23 BY THE CLERK:

24 Q. Scott Atcherson.

25 A. Yes, ma'am.

1 THE COURT: Is that your decision and
2 still your decision, sir?

3 MR. ATCHERSON: Yes, sir.

4 BY THE CLERK:

5 Q. Daisy Smalls, was this your decision and
6 is it still your decision?

7 A. Yes, ma'am.

8 Q. Jaime M. Bele, was this your decision and
9 is it still your decision?

10 A. Yes, ma'am.

11 Q. Ronald L. Tinnell, was this your
12 decision, and is it still your decision?

13 A. Yes, it is.

14 THE COURT: I believe it is Tyrell; is it
15 not?

16 MR. TYRELL: Tyrell, that is correct.

17 BY THE CLERK:

18 Q. Jerry E. Bryan, was this your decision?

19 A. Yes, ma'am.

20 Q. And is it still your decision?

21 A. Yes, ma'am.

22 Q. Marvin E. Ladson, was this your decision,
23 and is it still your decision?

24 A. Yes, ma'am.

25 Q. Johnny B. Britt, was this your decision

1 and is it still your decision?

2 A. Yes, ma'am.

3 Q. Douglas Judy?

4 A. I already stood.

5 Q. You already stood. Let me try another
6 one then.

7 Carolyn Kirkland, was this your
8 decision and is it still your decision?

9 A. Yes, it is.

10 Q. Sarah M. Horne, was this your decision
11 and is it still your decision?

12 A. Yes, ma'am.

13 THE COURT: All right. That's all.

14 Thank you very much.

15 All right. Anything else now before
16 I impose sentence?

17 MR. BAILEY: Not from the State, Your
18 Honor.

19 THE COURT: All right. The defendant,
20 John Edward Weik, has been found guilty by
21 this jury of the offense of murder, the jury
22 has recommended the defendant should be
23 sentenced to death. It is, therefore, the
24 judgment of the law and the sentence of the
25 Court the defendant, John Edward Weik, be

1 taken to Dorchester Detention Center and
2 thence to the State Department of Corrections
3 henceforth to be kept in close and safe
4 confinement until the 1st day of July 1999
5 upon which day between the hours of six
6 o'clock p.m. and six o'clock a.m., or upon an
7 order of execution issued by the South
8 Carolina Supreme Court, the defendant, John
9 Edward Weik, shall suffer death by
10 electrocution or by lethal injection in the
11 manner provided by law. Thank you very much.

12 MR. BEAUFORD: Thank you, Your Honor.

13 MR. WEIK: Thank you, sir. Appreciate
14 it.

15 THE COURT: All right.

16 MR. WEIK: Thank you all very much. God
17 bless you all.

18 THE COURT: I want to talk to this jury a
19 minute or two. I think we probably need to
20 let -- those who can't stay in here need to
21 leave probably. Mr. Bailiff, let's take her
22 out. She doesn't need to be here. I'll wait.
23 I'll pause until we let her leave.

24 (Pause in proceedings.)

25 THE COURT: Ladies and gentlemen of the

1 jury panel, let me tell you all a couple of
2 things before you go. First of all, you all
3 have the right to refuse to discuss your
4 verdict completely. No one has the right to
5 discuss this case with you all. If you want
6 to discuss it, that's your business. If you
7 don't want to discuss it, that's your
8 business. You can say whatever you want to
9 say, you can say nothing at all. No one has
10 the right to criticize you, no one has the
11 right to criticize what you've done. The
12 evidence in this case was clear and I find no
13 fault with your decision in this case, none.

14 And you have the right to discuss it
15 if you'd like to. And you may want to decide
16 you want to terminate a discussion if somebody
17 wants to talk to you about this case at any
18 time. And I'll tell you this: That if
19 anybody attempts to discuss this matter with
20 you and you don't want to discuss it, you get
21 their name, you find out who they are and I
22 want you to let the sheriff here in Dorchester
23 County know.

24 I've written a little -- I've typed
25 up a little sheet here I'm going to send with

1 each of you basically giving you this same
2 instruction with his telephone number on it
3 and address. And I tell you now, that if
4 anybody, anybody tries to bother you, harass
5 you in any way about your decision in this
6 case, you let him know and he's going to let
7 me know and I will take care of it for you.
8 No one has the right to criticize what you've
9 done.

10 Second thing I want to tell you is
11 that we appreciate your service. You have
12 gone beyond the call of duty, far beyond the
13 call of duty. Even those two of you who have
14 not even deliberated in this case, you've gone
15 far beyond what anyone could ever ask of you.

16 This is not an easy thing, we all
17 know that. It's not an easy thing. But these
18 agents tell me that this is the best jury that
19 they've had, that you all have just done more
20 than you could -- they could ask of you as
21 well.

22 They are going to take you, we're
23 not going to have people walking in and out,
24 you all are going to be taken out, taken back
25 to your rooms. And I assume you want to go

1 home tonight. I'll tell you what, if you
2 don't want to you can stay there. If you want
3 to go home tonight you can get your things,
4 they will see to it that you are safely home.
5 If you need a ride, if you need an escort
6 home, whatever it is that you need, it will be
7 done for you.

8 Second thing is in this county you
9 all are paid about \$25 a day for a juror. I'm
10 going to double it. My order is that the
11 County pay you double, which is not payment.
12 But I think you should be paid double, you've
13 been here double, you're entitled to it. And
14 that won't come close to paying you for what
15 you've done in this case.

16 I want to say for the solicitor's
17 office that I felt like you all handled this
18 matter as fairly as you possibly could and I
19 say that sincerely. I think that you all
20 prepared the case, you did not go overboard
21 with arguments, you allowed a great deal to
22 come before this jury and so forth that you
23 probably could have had a problem with.

24 And I want to say to these defense
25 attorneys that I appreciate what you all have

1 done. I can tell you I've been in your shoes,
2 right there, I know. And it's not an easy
3 job. You all didn't come in here and ask for
4 it any more than these jurors did, I know
5 that. And you have done what I believe to be
6 a commendable job in this case with absolutely
7 nothing to work with. And anybody that says
8 otherwise is crazy, they don't know what
9 they're talking about. You had no defense.
10 And what you did was is you took what you had
11 and gave all that you could to this jury to
12 consider and they've made their choice. I
13 don't have a problem with what they've done
14 and I certainly don't have a problem with
15 anything that you all have done in this case.
16 And I feel, again, the same way for those in
17 the solicitor's office.

18 I also want to thank you gentlemen,
19 lady and gentlemen, for your assistance this
20 week as well. It could not have gone more
21 smoothly and we certainly appreciate what you
22 have done as well. I'm going to -- as you
23 file out I'm going to give you one of these
24 sheets. If you all would like to discuss
25 anything about this case, I'm not one for

1 politicking, I'm not running for public
2 office, number one, but if you all want to
3 discuss this case with anybody, myself
4 included, I'm going to be here for a few
5 minutes, I'll be glad to step back there in
6 the jury room and speak to you.

7 As a matter of fact, I would like to
8 speak to you. You don't have to talk to me, I
9 would just like to thank you personally for
10 what you've done. Not for the decision you
11 made in particular, simply because you've
12 given us this whole week of your life, we
13 appreciate it.

14 Anything else from the State or the
15 defendant?

16 MR. BAILEY: Not the State, Your Honor.

17 MR. BEAUFORD: Nothing from the defense,
18 Your Honor.

19 MS. HARDEE-THOMAS: Nothing.

20 THE COURT: All right. We're adjourned.

21 (Pause in proceedings.)

22 THE COURT: You leaned over, said you
23 better go through this thing again. I'm sure
24 we did it right the first time around. His
25 name was not called the second time around,

1 Mr. Judy stood up when it should have been
2 this gentleman. What I thought I'd do just s
3 there won't be ever any question about it --

4 THE CLERK: What is his name?

5 MR. BELL: Dane Wiggins.

6 THE CLERK: Mr. Wiggins.

7 THE COURT: Mr. Beauford,

8 Ms. Hardee-Thomas, what occurred, I stepped
9 back into the jury room to speak to the jurors
10 and Mr. Wiggins here said when you all went
11 through that process the second time around
12 after you polled the jury, my name was not
13 called. What occurred was his name was the
14 second one on the list, Mr. Judy stood up and
15 said it was me. When she got to the bottom of
16 the list she handed it to me and she said that
17 was Mr. Judy, he's already stood, go to the
18 next name. His name was not called.

19 So I would just ask him now whether
20 or not his finding along with the others, his
21 own finding as to the aggravating circumstance
22 of physical torture and burglary first degree
23 was beyond a reasonable doubt and was that his
24 verdict then, is it still his verdict now.

25 MR. WIGGINS: Yes, sir.

1 THE COURT: All right. Just no use to
2 letting the record be lax on that one person.
3 I don't even think -- I know we didn't need to
4 do it.

5 MS. HARDEE-THOMAS: But just to cover.

6 THE COURT: Did it anyway. All right.
7 Then you want me to wait on him to come back
8 as far as the sentencing on burglary?

9 MR. BAILEY: Yes, sir. I think so.

10 THE COURT: I forgot to sentence him on
11 the burglary, but I didn't have a sentence
12 sheet, didn't even think about it.

13 MS. HARDEE-THOMAS: Okay.

14 (Pause in proceedings.)

15 THE COURT: Mr. Weik, I apologize to you,
16 officers, I apologize to all of you for making
17 you come back. Do I need to hear anything in
18 regards to the burglary?

19 MR. BEAUFORD: No, Your Honor.

20 THE COURT: All right. Well, on the
21 burglary charge, 98-GS-18-0749, burglary first
22 degree, the sentence is that Mr. Weik be
23 sentenced to the State Department of
24 Corrections for the determinate period of his
25 natural life.

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MS. HARDEE-THOMAS: Thank you.

THE COURT: All right.

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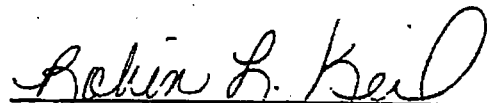
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 19th day of December 2000.


Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

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ORIGINAL

STATE OF SOUTH CAROLINA)

In the Court of RECORDS

County of Dorchester)

2003 JUN 19 AM 11:41

JOHN EDWARD WEIK 5068)

Full name and prison number, if any, of applicant.)

CHERYL GRAMAM
CLERK OF COURT
DORCHESTER COUNTY
APPLICATION FOR

v.)

STATE OF SOUTH CAROLINA)

Name of Respondent)

POST-CONVICTION RELIEF

2003CP1801070

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention Lieber Correctional Institution, Post Office Box 205, Ridgeville, SC
29472

2. Name and location of Court which imposed sentence M. Duane Shuler, Circuit Court Judge

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 98-GS-18-749 - Murder

(b) 98-GS-18-750 - First Degree Burglary

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) May 29, 1999 - Death for Murder

(b) May 29, 1999 - Life for Birglary

(c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty xxx _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. The South Carolina Supreme Court _____
 - ii. The United States Supreme Court _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Opinion – Affirmed – South Carolina Supreme Court _____
 - ii. Petition for Writ of Certiorari Denied – United States Supreme Court _____
 - iii. _____
 - (c) the date of each such result:
 - i. September 3, 2002 _____
 - ii. June 16, 2003 _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2002 W.L. 2008242 _____
 - ii. cert denied 2003 W.L. 1948540 (U.S.S.C.) _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment A _____
 - (b) _____
 - (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See Attachment B

(b) _____

(c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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:

- (a) Not ripe for adjudication
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Percy Beauford, Esquire, and Marva Hardee Thomas, Esquire
- (b) your trial, if any? Percy Beauford, Esquire and Marva Hardee Thomas, Esquire
- (c) your sentencing? Percy Beauford, Esquire, and Marva Hardee Thomas, Esquire
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Robert M. Dudek, Esquire
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Robert M. Dudek, Esquire

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Percy Beauford, 204 N. Live Oak, Moncks Corner, SC 29461
- ii. Marva Hardee Thomas, 130 E. Richardson Avenue, Summerville, SC 29483
- iii. Robert M. Dudek, 1122 Lady Street, Suite 940, Columbia, SC 29201

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

- i. Arraignment, trial and sentencing
- ii. Arraignment, trial and sentencing
- iii. appeal to South Carolina Supreme Court and United States Supreme Court

18. State clearly the relief you seek in filing this application.

A New Trial

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

NO

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)

VERIFICATION

I, JOHN EDWARD WEIK 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 E. Weik
 JOHN EDWARD WEIK

Sworn to and subscribed before me

This 19th day of June, 2003

Warren J. Ferguson L.S.
 Notary Public for South Carolina

My Commission Expires Sept. 22, 2008.

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

I, JOHN EDWARD WEIK 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 or 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 proceeding or give security therefor.

John E. Weik
 Applicant

Sworn to and subscribed before me

This 19th day of June, 2003

Warren J. Ferguson L.S.
 Notary Public for South Carolina

My Commission Expires: Sept 22, 2008.

ATTACHMENT A

9. Ineffective Assistance of Counsel in derogation of the Sixth Amendment to the United States Constitution.

ATTACHMENT B

10. Defense counsel was ineffective, in violation of the Sixth Amendment to the United States Constitution, for failing to comply with the statutory requirements necessary for the Court to accept a guilty but mentally ill plea from petitioner. The South Carolina Supreme Court refused to address this issue on appeal due to defense counsel's ineffectiveness.
- B. Defense counsel was ineffective, in violation of the Sixth Amendment to the United States Constitution, by failing to request that the Court charge guilty but mentally ill as a verdict form during the guilt phase. Counsel's ineffectiveness caused the South Carolina Supreme Court to refuse to address this issue on direct appeal.
- C. Defense counsel was ineffective, in violation of the Sixth Amendment to the United States Constitution, by failing to offer available evidence of voluntary manslaughter. The decedent's daughter testified during the penalty stage of the trial, that the decedent and petitioner were involved in a physical altercation immediately before the shooting. This available evidence of a heat of passion and a sufficient legal provocation would have caused the trial court to charge the jury on voluntary manslaughter, and could have averted the penalty stage in this death penalty case.
- D. Defense counsel's ineffectiveness was so pervasive that it violated petitioner's Sixth Amendment rights, and also the South Carolina standard under Frett v. State, 298 S.C. 54, 378 S.E.2d 249 (1988).

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

JOHN EDWARD WEIK, #5068)
Applicant,)

C/A No. 03-CP-18-1070

vs.)

RETURN TO APPLICATION
FOR POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA,)
Respondent.)

CH
The Respondents, above-named, hereby make a return to the application for post-conviction relief filed by Robert M. Dudek of the South Carolina Office of Appellate Defense on behalf of the Applicant, John Weik on June 19, 2003. On July 9, 2003, the South Carolina Supreme Court entered an order assigning the Honorable Perry M. Buckner, Circuit Court Judge to the matter. On September 22, 2003, Judge Buckner entered an order appointing Norbert Cummings and Darrell Thomas Johnson to represent the Applicant in the matter. The Respondents will serve appointed counsel in the matter. The Respondents make the following in return:

I.

On July 16, 1998, a Dorchester County Jury indicted John Edward Weik for Dorchester County for murder (98-GS-18-0750) and burglary in the first degree (98-GS-18-749). The State subsequently served notice of intent to seek the death penalty on July 20, 1998.

A. Statement of Facts

The Applicant, John E. Weik, had a relationship with Susan Krasae when she was about 17 years old. As a result, they had a son, Daniel, who was around ten years old when her death occurred.

Susan had custody of Daniel after their relationship ended. She later married, had a second child, Amber, and divorced Amber's father. At the time of the incident, Susan was living with her two children and fiancé in a mobile home next door to her father, Carl Hutto. Weik had not seen his son for nearly nine (9) years. During the year of the crime he began seeing his son.

On April 30, 1998, John Weik lived with his parents in Moncks Corner. The day before he told his co-worker that he was having trouble with his son and that if he does not come back to work something happened. He called his son, Daniel, on the telephone. Daniel told him that "I can't see you anymore", after he tries to get his son to choose between them. After the call, Weik got into his truck, armed with a loaded shotgun and drove to the Krasae trailer. An argument occurred. Ms. Krasae returned to the inside of her trailer with her children. Weik went to his truck, got a 12 gauge semiautomatic shotgun, which was loaded, and returned to the trailer. He kicked the door open the victim had closed and shot Susan Krasae four (4) times with double aught buckshot. She died as a result.

Weik got into his truck and drove off. After a short distance he was stopped. The Appellant subsequently gave statements to the law enforcement admitting his involvement in the crime.

Procedural History

The Applicant was represented by Percy Beauford and Marva A. Hardee-Thomas. The Respondents were represented by Solicitor Walter M. Bailey, Jr., Robert D. Robbins, and B. Harrison Bell. A pretrial hearing was held on May 5, 1999. A competency hearing was held on

May 18, 1999 before the Honorable M. Duane Shuler, Presiding Judge. Judge Shuler held that Weik was competent to stand trial on May 19, 1999.

Jury selection began on May 24, 1999. On May 26, 1999, the trial began before Judge Shuler and jury. On May 27, 1999, the jury found Weik guilty of murder and burglary in the first degree. On May 29, 1999, the penalty phase began. The jury found beyond reasonable doubt the existence of the statutory aggravating circumstances of physical torture and burglary in the first degree; and recommended the death sentence. Judge Shuler then sentenced Weik to death for the murder conviction. He sentenced him to life imprisonment for burglary in the first degree.

Weik appealed to the South Carolina Supreme Court. On appeal, he was represented by Robert M. Dudek of the South Carolina Office of Appellate Defense. In the appeal, the following questions were raised by Weik:

- 12
#3
- I. Whether the judge erred by refusing to hold a competency hearing during the guilt stage of the trial when defense counsel informed the judge Appellant was hearing voices, counsel had serious reservations about Appellant's ability to make rational decisions and assist counsel, and the judge had a continuing duty to assure Appellant was competent to stand trial?
 - II. Whether the trial judge erred by refusing to accept Appellant's plea of guilty but mentally ill where the judge had already heard evidence Appellant was mentally ill, and his truncated misleading colloquy with Appellant about the meaning of "malice" was insufficient to justify the refusal to accept that plea once the jury already knew of it?
 - III. Whether the judge erred by ruling Appellant was competent to stand trial where even the State's experts testified Appellant was not "faking", he was relating "bizarre information" to the doctors, where Dr. Schwartz-Watts and Dr. Morgan testified Appellant was not competent, and Dr. Brannon testified Appellant was "crazy", since the judge abused his discretion by finding Appellant competent given this evidence.
 - IV. Whether the judge erred by failing to instruct the jury on the law of guilty but mentally ill where the judge earlier stated he would submit that verdict form, and

there was evidence Appellant was hearing voices, felt unable to "get back out" of the house before he shot the decedent, and felt outside his body at the time he shot the decedent?

- V. Whether the judge erred by admitting State's penalty exhibits 1-12, particularly State's 8, 9, & 11, since they are very gruesome photographs, and their probative value was far outweighed by their unduly prejudicial effect?
- VI. Whether Appellant's death sentence should be vacated as disproportionate to other death penalty cases since this was a domestic crime, the aggravating circumstances were only technically applicable, and Appellant was mentally ill?

The South Carolina Supreme Court on September 3, 2002, initially affirmed the conviction and sentence. State v. John Edward Weik, Op. No. 25556, 2002 WL 2008242 (SCSCT Sep. 3, 2002). A petition for rehearing was filed and granted on October 10, 2002. After argument, on January 9, 2003, the South Carolina Supreme Court adhered to its original decision.

Respondents attach and incorporate herein by reference the following documents to the Return:

1. Record on Appeal – 5 volumes
2. Written Tapes Statement of John Weik.
3. Final Brief of Appellant.
4. Final Brief of Respondent.
5. Final Reply Brief of Appellant.
6. State Exhibit 67
7. State Exhibit 62.
8. Evidence transfer sheet.
9. April 30, 1998 traffic stop statement of Weik.

10. 911 Dispatch Tape Summary -- Photos of Car (4).
11. Evidence transfer.
12. Appeal Notice documents, including notice of appeal, sentencing sheets, indictments, and verdicts.
13. Transcript of service of death penalty notice. July 20, 1998.

II.

Mr. Weik filed an application for post-conviction relief in Dorchester County on June 19, 2003 application for post-conviction relief in Orangeburg County. In the application, it was alleged that he received ineffective assistance of counsel.

Particularly, he alleges:

9. Ineffective assistance of counsel in derogation of the Sixth Amendment to the United States Constitution.

- A. Defense counsel was ineffective, in violation of the Sixth Amendment to the United States Constitution, for failing to comply with the statutory requirements necessary for the Court to accept a guilty but mentally ill plea from petitioner. The South Carolina Supreme Court refused to address this issue on appeal due to defense counsel's ineffectiveness.
- B. Defense counsel was ineffective, in violation of the Sixth Amendment to the United States Constitution, for failing to request that the Court charge guilty but mentally ill as a verdict form during the guilt phase. Counsel's ineffectiveness caused the Supreme Court to refuse to address this issue on direct appeal.
- C. Defense counsel was ineffective in violation of the Sixth Amendment to the United States Constitution, by failing to offer available evidence of voluntary manslaughter. The decedent's daughter testified at the penalty stage of the trial, that the decedent and petitioner were involved in a physical altercation immediately before the shooting. This available evidence of heat of passion and a sufficient legal provocation would have caused the trial court to charge the jury on voluntary manslaughter, and could have averted a death penalty case.
- D. Defense counsel's ineffectiveness was so pervasive that it violated petitioner's Sixth Amendment right, and also the South Carolina standard under Frett v. State, 298 S.C. 54, 378 S.E.2d 249 (1988).

III.

Respondents submit that the entire application is without merit.

A. General Law On Ineffective Assistance of Counsel Standards.

Under the standard for evaluating claims of ineffective assistance of counsel, the Applicant must establish that counsel's representation fell below an objective standard of reasonableness. Strickland v Washington, 466 U.S. 668 (1984). Counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of counsel's performance is whether he fell outside of the range of competence demanded of lawyers practicing criminal law. Butler, supra. The scrutiny of counsel's acts or omissions must be highly deferential and a reviewing court must make every effort to remove the distorting effects of hindsight. Strickland, 466 U.S. at 689.

Competency is measured against what an objectively reasonable attorney would have done under circumstances existing at the time of the representation. Savino v. Murray, 82 F.3d 593, 598 (4th Cir. 1996). The Court should "decline to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial." Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996).

As the Supreme Court made clear in Strickland:

... the reasonableness of counsel's actions
may be determined or substantially

influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigations are reasonable depends upon such information. . . [W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable.

Strickland, 466 U.S. at 691. Barnes v. Thompson, 58 F.3d 971, 978 (4th Cir. 1995); Matthews v. Evatt, 105 F.3d 907, 919-920 (4th Cir. 1997). The mere fact that trial counsel's strategy was unsuccessful does not render counsel's assistance unconstitutionally ineffective. Strickland, 466 U.S. at 689. Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995).

In addition to a burden of showing deficient performance, counsel must also prove prejudice under the Sixth Amendment. The standard of prejudice differs depending upon whether it is related to guilt phase issues or penalty phase issues. In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.* Recently in Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998), the South Carolina Supreme Court restated the prejudice prong in a capital sentencing proceeding as being established when "there is a reasonable probability that, absent [counsel's] errors, the sentencer (including an appellate court, to the extent it independently reweighs the evidence) would have

concluded that the balance of aggravating and mitigating circumstances did not warrant death," citing Strickland. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Jones, 504 S.E.2d at 823-824. Accord, Plath v. Moore, 130 F.3d 595 (4th Cir. 1997) (given the overwhelming aggravating factors, there is no reasonable probability that the omitted evidence would have changed the conclusion that the aggravating circumstances outweighed the mitigating circumstances and hence, the sentence imposed. Thus, in weighing the omitted evidence against that actually used to convict and sentence Plath, the mitigating evidence seems insufficient to shift the balance in Plath's favor.). Respondents submit that he will be unable to satisfy this burden.

A. GBMI Plea.

In his first allegation, he contends that his counsel failed to comply with the statutory requirements for entry of a guilty plea as "guilty but mentally ill" under the statute. The Appellant had initially given notice of an insanity defense that was withdrawn. R. p. 472. The defense advised the judge of an intent to enter a plea of guilty but mentally ill. R. p. 515, l. 7-8. After jury selection was initially begun, the trial court made inquiry of Weik concerning the entry of the plea. R. p. 551-55. The court rejected the entry of the plea finding that he was not admitting to the element of the crime of malice. R. p. 553, 555.

A. How The Issue Was Raised at trial.

THE COURT: Well, let me ask you this, sir: Are you telling me that you want to plead guilty to the charge of murder?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand what murder is?

THE DEFENDANT: Taking somebody's life, right, sir?

THE COURT: Well, it's not just taking somebody's life. It's killing somebody with malice. In other words, that you had some evil or some malice in your mind or some bad feelings --

THE DEFENDANT: No, sir.

THE COURT: Some bad feeling ahead of time.

THE DEFENDANT: No, sir.

THE COURT: No, sir, what?

THE DEFENDANT: No, sir. I didn't have any malice, sir.

THE COURT: Didn't have any malice. Well, then you aren't guilty of murder. So if you are guilty of murder, then you can't be guilty of murder. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I'm not going to let you plead guilty. If you say that you aren't guilty of having any malice, bad feelings, bad intent and so forth in your mind, then you can't be guilty of the crime of murder.

THE DEFENDANT: I still look her life.

THE COURT: Sir?

THE DEFENDANT: I still took her life.

THE COURT: I understand that. But taking someone's life does not mean that you are guilty of murder.

THE DEFENDANT: She's got to have her avenge, she can't go unavenged.

THE COURT: I'm sorry, tell me what he said.

MR. BEAUFORD: He said she can't go unavenged.

THE COURT: Unavenged, I understand. Well, that being the case, I mean, I don't think there's any question that I have to leave the plea. I mean, it's just that he's indicated from the start that he wanted to pled guilty, he said he was guilty but he always said I took a life so I should have to give a life, I mean that's been his position, you know, throughout last week and so forth.

MR. BEAUFORD: Yes, Your Honor.

THE COURT: And saying that -- I mean, saying is one thing, but understanding what murder actually is, the definition of murder is something else. And if he understands the definition of murder and says that he did not have malice, then obviously under the law he's not guilty of murder and I wouldn't entertain a guilty plea, so that's just where I'm stuck, I think.

All right. Let's bring juror number one out.

R. 552, l. 20 - 555, l. 9

B. Law/Analysis

In State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992), the Supreme Court found that a criminal defendant who enters a plea of "guilty but mentally ill" under § 17-24-20(A), - 70, was properly sentenced to death by a judge after the entry of the plea. In § 17-24-20(D), the court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in § 17-24-20(A). Respondents submit that the pre-trial attempt to enter the plea failed in a number of respects.

First, the trial court found that the entry of the GBMI plea to murder was in error because Weik refused to admit that he committed the act "with malice [aforethought]. R. p. 551-55. The Appellant contends this was error because either 1.) a plea of GBMI is not a plea of guilty; and 2.) implies that questions of "guilt" are not at issue.

A plea of guilty but mentally ill, just as a plea of guilty, must be freely and voluntarily entered. Although an admission of guilt is not a constitutional or state law requirement, North Carolina v. Alford, 400 U.S. 25 (1970); Gaines v. State, 335 S.C. 376, 517 S.E.2d 439 (1999), the potential plea judge does have the discretion to reject a plea if he believes it is entered without full knowledge of the nature of the offense. See, Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995) (Alford--GBMI plea). State v. Ray, 310 S.C. 431, 427 S.E.2d 171 (1993) (Alford plea may be basis for death sentence).

A guilty plea acts as a formal admission of all the elements of the crime. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999) (plea court failed to ask for an admission of guilt). Since a plea acts as an admission of the elements of a crime, it cannot be error to refuse to accept a guilty plea when the Appellant refuses to admit to the elements of a crime and the plea is not being entered pursuant to Alford. Respondents submit that the trial judge did not err in refusing this submission.

Further, the Appellant contends that he, prior to that time, had satisfied a showing of the fact under § 17-24-20(A), that while mentally ill he "lacked sufficient capacity to conform his conduct to the requirements of law." Contrary to his bare assertion, he had not made that showing in the earlier proceeding. The court-appointed Hall Institute doctors had opined that he had capacity to conform his conduct to the requirements of law. R. p. 215-16, 243, 287-88. The judge at the earlier competency proceeding made a similar conclusion from the matters

presented. R. p. 456. The Applicant misapplies this statute. Contrary to the assertion, he did not already satisfy this burden.

Weik was not deprived of showing to the jury in the guilt phase that he was GBMI when the judge refused to accept the entry of a guilty plea of guilty but mentally ill. His assertion to the contrary must be denied. Compare, State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (error to allow jury sentencing after entry of guilty plea). State v. Allen, 261 S.C. 448, 200 S.E.2d 684 (1973) (plea is an admission of guilt of all the elements of the crime.)

In rejecting the similar claim, the South Carolina Supreme Court stated:

2. Plea

[6] During the arraignment in the jury's presence, the trial judge asked whether appellant was pleading guilty or not guilty. Appellant's attorneys were permitted to approach, and an off-the-record bench conference was held. One of appellant's attorneys then stated, Your honor, [appellant] intends to plead guilty, but mentally ill.

The jury venire was qualified, and the potential jurors divided into panels. Before individual *voir dire* began, there was a colloquy between the trial judge and appellant. During this session, appellant told the judge he wanted to plead guilty to murder. When the judge defined the elements of murder, appellant denied he had acted with malice, and the judge declined to accept the guilty plea.

After the jury had been selected, and before opening statements, the judge informed the jury that appellant's attorney had 'misspoken' during the arraignment when he said appellant was pleading GBMI, and that in fact appellant was pleading 'not guilty.'

On appeal, appellant contends the trial judge committed reversible error in refusing to accept the plea, and in telling the jury that appellant's plea had changed from GBMI to not guilty. While appellant now contends he was attempting to enter a GBMI plea, the record reflects the trial judge believed it was intended to be a guilty plea. No attempt was made during this proceeding to comply with the statutory requirement for a GBMI plea. [FN3] In addition, there was no objection to the judge's refusal to accept the

plea nor to the judge's informing the jury that appellant was pleading 'not guilty' rather than GBMI. Since there were no objections made at trial, there is nothing preserved for this Court's appellate review. *E.g., State v. Huggins*, 336 S.C. 200, 519 S.E.2d 574 (1999) (it is well settled that issues cannot be raised for the first time on appeal).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

B. Failing To Request A GBMI Charge.

In his second assertion, he asserts that the trial counsel erred in failing to request the trial judge to instruct the jury on the alternative verdict of "guilty but mentally ill." The Applicant bases his request on the fact that Weik had tendered a GBMI plea and that during his guilt phase testimony, he declared he had heard voices¹ and that he could not get out of the house. R. p. 1649-1650. Respondent submits there was no Sixth Amendment error in the failure to request an instruction.

As stated above, a person is guilty but mentally ill if, at the time of the commission of the crime, he had the capacity to distinguish right from wrong, but because of mental disease or defect, he lacked sufficient capacity to conform his conduct to the requirements of law. § 17-24-20, *State v. Wilson*, *supra*.

It is hornbook law that the law to be charged to a jury is determined by the evidence presented at trial. *State v. Hill*, 315 S.C. 260, 433 S.E.2d 848 (1993). In *State v. Campen*, 321 S.C. 505, 469 S.E.2d 619 (S.C. App. 1996), the Court of Appeals held that the defendant was entitled to a GBMI instruction where the defendants own testimony and the history of mental

¹ By his trial admission, the voices told him to kill himself, not his son's mother.

illness raised an issue of sanity where the psychiatrist and defendant testified about a long history of mental illness and treatment. Respondents further recognize that lay testimony may be used to establish or defeat issues of mental sanity. State v. Rimert, 315 S.C. 527, 446 S.E.2d 400 (1995). Importantly, the failure to request or object to the failure to instruct waives any alleged error. Singletary v. State, 281 S.C. 444, 316 S.E.2d 369 (1984). Further, no instruction should be given by the trial judge, at the request of the defendant, which tenders an issue not supported or presented by the evidence. State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (S.C. App. 1996).

There was no objection to the instructions as given to request this instruction. R. p. 1781, 1785. Further, the record reveals that the defense did not request this verdict after the defense case had rested prior to the charge except for a manslaughter charge. R. p. 1736-37. In the direct appeal, the Applicant asserted that the trial judge failed to sua sponte instruct on this issue. In denying relief, the Supreme Court stated:

4. Jury Instructions

[9] Appellant next contends the trial judge erred when he failed to submit GBMI as a possible form of verdict in the guilt phase. Whether this was an error is not properly before the Court in this direct appeal since appellant neither requested the charge nor called its omission to the attention of the trial judge. State v. Hicks, 330 S.C. 207, 499 S.E.2d 209 (1998) (contemporaneous objection to omission of charge required to preserve issue even in capital case).

However, as noted below, the record which was before the jury, not the trial judge, did not support such a request because there was no showing before the jury either that he suffered from a major mental illness or that due to that illness he lacked sufficient capacity to confirm his conduct to the requirements of the law.

A. The Trial (and Competency Hearing) Record

1. Pretrial Competency Hearing - May 18, 1999

The trial judge held a pretrial competency hearing on May 18, 1999. At the hearing, testimony was received from court-appointed examiners, Dr. Pamela Crawford, Dr. Stephen Shea, and Dr. Thomas Behrmann. The Appellant's counsel presented testimony from Dr. William Brannon, Lilly Weik, Dr. Donna Schwartz-Watts, Dr. Donald Morgan, and the Appellant. R. p. 194-436.

a. Dr. Pamela Crawford

Dr. Pamela Crawford, a forensic psychiatrist and Director of Forensics at William S. Hall Institute, testified that she evaluated Weik pursuant to a December 16, 1998 order. She stated that she received numerous materials: the arrest warrants, autopsy, incident report, statements of the Appellant, police case notes, medical records, including a normal MRI, and various lab tests. R. p. 198-199. She also sought to elicit information from the defense counsel. R. p. 199. She was also aware of two normal neurological consultations. R. p. 201. She stated that she had spent approximately six (6) hours with the Appellant. R. p. 201-202. She determined that he had no prior psychiatric history or history of alcohol or drug abuse. R. p. 201-202. She stated he had left school in the 11th grade and had a history of gainful employment and involvement in the church.

Dr. Crawford described the Appellant's demeanor as "cooperative, pleasant, and appropriate." R. p. 203. She described that in her initial interview with him, he described seeing a "hag" as a vision that occurred just prior to falling asleep or waking up. She described this hypnogogic or hypnopompic hallucination as a very common phenomenon. She also stated that on this date (May 18), he described the fact that he had told the defense expert that he had heard

voices in the past when he fell asleep or woke up and when he had been under extreme stress. R. p. 205. He had previously denied hearing voices previously to her. R. p. 205.

Dr. Crawford opined that he had an average IQ and had the ability to understand Miranda warnings. She diagnosed Weik with schizotypal personality disorder, based upon his history of life-long discomfort in social situations, a reduced capacity for relationships, ideas of reference, his over interpretation of phenomena, his odd beliefs about "the hag" as a demon and that the CIA has an interest in his family. R. p. 208. He also has a "constricted effect" because he is very reserved and does not show emotion a great deal of the time and social anxiety. R. p. 208-09.

Dr. Crawford opined that he knows that he is charged in murder and burglary, that he is able to define them and is aware of the penalties, that he knows the duties and responsibilities of the solicitor, defense counsel, and the jury. R. p. 210. He also knows and appreciates the differences in a guilty plea and not guilty plea, appreciates the fact that the charges are serious. R. p. 210-211.

Dr. Crawford opined that Weik had a factual and rational understanding of the proceedings. R. p. 211, l. 4-11. She also opined that he had the ability to disclose relevant information to his lawyers prior to and during trial, that he would see his lawyers as a resource for legal advice, that she had observed him interacting with his lawyers at this date. R. p. 209-212. She further opined that he trusts his attorneys, had the ability to understand a plea bargain, to follow testimony, and to testify, if he chooses. She opined that he has sufficient present ability to consult with his lawyers in a reasonable degree of rational understanding. R. p. 212, l. 17-20.

Dr. Crawford stated, however, that Weik's desired outcome was to receive the death penalty. R. p. 212-213. She was advised by him that the reasons, which she found to be rational, were that he did not want to spend his life in prison with criminals and if he got out, the people

he cared about would no longer be living. R. p. 213. He had also told her that his death would benefit his son with Social Security benefits. R. p. 213. Further, he stated that based upon his religious beliefs that he deserved to die since he had killed someone. R. p. 213.

She opined that Weik's desire to receive the death penalty was not based upon any delusions. She stated that he was able to consider alternatives that could affect his decision, including if his son asked him not to receive the death penalty. R. p. 213-14. She opined that a person could rationally make the choice and that Weik was rationally making this choice.

Dr. Crawford had an opinion that Weik was able to distinguish moral and legal right from wrong at the time of the crime. R. p. 214. She noted that her review of the statements revealed evidence of a depersonalization experience (i.e. like watching himself from a distance), but found that this would be "expectable" for someone in the act of murdering someone with a shotgun. R. p. 215, l. 12-20.

As to the potential for GBMI, Dr. Crawford opined that Weik had the ability to conform his conduct to the requirements of law on April 30, 1998. R. p. 215-216.

She opined that Weik did not suffer from depersonalization disorder because he did not experience it on repeated occasions and it did not interfere with his functioning or daily life. R. p. 216-217. She also ruled out paranoid schizophrenia because his ideas of reference did not meet delusional proportions as fixed false beliefs and only occurred when falling asleep or waking up without deterioration in his functioning. R. p. 217. She pointed to the fact that he had been able to maintain a job and on the day of the crime, his boss had considered given him a raise since he was doing well. R. p. 218.

On cross-examination by the defense, Dr. Crawford stated that on the morning of the hearing, Weik stated he was not hallucinating, but had in the past. R. p. 222-223. She described

the interview on May 6 when Weik described two to three occasions that he had experienced "the hag" while falling asleep or waking up and described it as a demon who held him down. R. p. 224. She stated that he had also stated he had heard voices prior to the incident that he was a bad person and told him to kill himself. R. p. 225, 227. She noted that he had suicidal thoughts in the past. R. p. 225. She learned that he had not attempted suicide despite his suicidal thoughts expressed in an earlier letter. R. p. 226-227.

Dr. Crawford stated that it could be rational thought for someone to think that it is preferable to die than to spend the rest of his life in prison. R. p. 227.

She stated that Weik also saw his role in jury selection to eliminate people he did not think were appropriate on the jury, like the CIA or Masons. R. p. 228.

Dr. Crawford stated she met with his mother about 15 minutes and also received a full social history. R. p. 229.

She stated that Weik knew the role of his attorneys is to help in his defense and was aware that they did not want him to be sentenced to death. R. p. 229-230. She opined that although the outcome they seek is different from his, that he can assist them. R. p. 230, l. 507.

Dr. Crawford opinion that some rational people hear voices. R. p. 231. She stated that the fact that he described in his statement enjoying murdering someone can be a "rational thought." R. p. 232-233.

b. Dr. Stephen Shea

Dr. Stephen Shea, a forensic psychologist who was the chief psychologist at Hall and an assistant professor at the University of South Carolina Medical School Department of Neuropsychiatry, testified that he gave a series of psychological tests to Weik, interviewed Weik, and received medical reports and numerous documents related to the incident, including the

statements of Weik. R. p. 240-41. He opined that Weik was of average intelligence. He concurred with Dr. Crawford on her diagnosis of schizotypal personality disorder and the legal questions. R. p. 242-46. Particularly, he opined that Weik had the ability on April 30, 1998 to determine moral and legal right from moral and legal wrong and did not suffer from a mental illness or defect that would have prevented it. R. p. 242-43 (M' Naughten). **Further, he opined that he does not suffer from a mental illness or defect so severe that it would prevent him from conforming his behavior to the requirements of law. R. p. 243 (GBMI).** Dr. Shea testified that he had participated in prior interviews of Weik and interviewed him that day. R. p. 243. He opined, like Dr. Crawford, that Weik had a rational and factual understanding of the case and has the ability to consult with his lawyers. R. p. 244.

Dr. Shea testified that the depersonalization experience that Weik described in his statement was not unusual for a person in a traumatic event. R. p. 244-45. Like Dr. Crawford, Dr. Shea stated that he had ruled out "depersonalization disorder" because he didn't show it as a separate clinical entity or a repeated problem, but rather two periods that both occurred during traumatic events. R. p. 245.

Dr. Shea also found that Weik did not show psychosis or a decline in social or occupational functioning to suggest schizophrenia. R. p. 245-56. As to schizotypal personality disorder, Dr. Shea stated that this was not so severe that it wouldn't keep him from perceiving or conforming to reality. R. p. 246. He also opined that Weik was able to understand and assert his Miranda rights. R. p. 246-47.

Dr. Shea stated that Weik during his interviews was clean and had appropriate hygiene. His demeanor varied from initially angry and suspicious when at the hospital to later being very cooperative and anxious. R. p. 248. Dr. Shea stated he had spent 13 to 15 hours with him. He

stated that during this hearing, he observed Weik reading from the Bible and not appearing to pay attention which was different than during his interviews. R. p. 249-50.

Dr. Shea testified that Weik's description of "the hag" varied. Weik had initially suggested it was an experience that he had since childhood and happening all the time, then later clarified it had only happened on a few occasions. R. p. 251. Weik explained that it could not tell how many because he attributes his bad dreams to be the hag's work. R. p. 251. Weik estimated between 2 and 10 times. Like Dr. Crawford, Dr. Shea found this experience "not unusual" and possible with people without a mental illness and more common in a schizotypal personality.

M 4/10.
On cross-examination, Dr. Shea acknowledged that the number of "hag" experiences decreased when he was questioned more fully about it. R. p. 253. Dr. Shea stated that Weik denied being crazy, but would give bizarre experiences and odd beliefs that he found to be consistent with schizotypal personality. Weik told him that he read the Bible because he has been saved and is a Christian. R. p. 255. He told him that through prayer he can keep the devil or evil spirits away. R. p. 255, 256. Contrary to counsel's assertion, Dr. Shea found that Weik did not read the Bible "constantly", but he always had it with him. R. p. 255. Dr. Shea saw these beliefs as a matter of faith rather than rational proof and that Weik's beliefs are not as far out of the mainstream to be a sign of mental illness. R. p. 256.

Dr. Shea described Weik telling him about an accidental gunshot wound and a bad car accident, but was not sure he had related the car accident to Dr. Behrmann or Dr. Crawford. He testified that he shared "most of his notes" with the forensic team. R. p. 258.

Dr. Shea stated he saw Weik associating with other patients and the chaplain. R. p. 259. Dr. Shea stated that his notes reflected that Weik ate on and off while at the hospital.

c. Dr. Thomas Behrmann

Dr. Thomas Behrmann, former Assistant Director at Hall, also testified that Weik was competent to stand trial. Dr. Behrmann, a forensics psychiatrist, testified that he had seen Weik in 1998 and during March 1999 and on the date of the hearing. R. p. 284-85. He stated his interviews with Weik were consistent and did not show a deterioration of his mental status. R. p. 285-86. Dr. Behrmann concurred in the findings of competency by Dr. Crawford and Dr. Shea. R. p. 286-87. **In addition to find him criminally responsible under M'Naughten and able to conform his conduct to the requirements of law (GBMI), he opined that Weik was currently competent to stand trial.** R. p. 287-88. He also concurred in the conclusion of schizotypal personality. R. p. 288.

Dr. Behrmann found that while a number of Weik's reports are bizarre, none gives rise to the threshold of being actual delusional beliefs. R. p. 288. Further, many of the beliefs were a culturally specific belief in the idea of a "hag" that is tied to the "root" religion and common in South Carolina. R. p. 288, l. 20 - p. 289, l. 2. Dr. Behrmann described seeing other patients who had described "the hag." R. p. 289.

Dr. Behrmann also found the perceived experience of seeing oneself at a time of stress was common in over 1/3 or 1/2 of the population, including people without mental illnesses. R. p. 289. He admitted that Weik expressed a desire to plead guilty and get the death penalty and stated Weik had not suggested this desire arises from a delusional process, but described consistent logic as to why the punishment is acceptable to him. R. p. 290-91. He described another individual who he had found competent and opted for the death penalty. R. p. 292-93. He concluded that Weik was competent to stand trial on that date. R. p. 293.

On cross-examination, Dr. Behrmann stated that Weik told him that according to his religion if you kill someone else, you deserve to die. R. p. 294-95. He described his March 15, 1999 meeting with Weik when the death penalty was discussed, that he wanted justice to be done, for the court to find out what's correct and for him to receive the death penalty. He said it would not serve any purpose and waste of money for him to stay alive. He told Dr. Behrmann the death penalty would be quicker and a better option. R. p. 296. Dr. Behrmann stated that on that date, Weik was not suffering under any kind of delusional process or fixed false beliefs. R. p. 298-99. He acknowledged that Weik thought that he did not want CIA people on his jury because he feared they were to harm him or his family, but he said it would be difficult to determine who they were. R. p. 299-300.

Dr. Behrmann found Weik to be anxious today, that Weik does become tangential but is able to come back to the former question. R. p. 300-01. He found that the anxiety of Mr. Weik at the outset of his death penalty trial to not be an unusual or abnormal response of someone in his situation. R. p. 300-01. Further, Dr. Behrmann opined that Weik did not suffer from a major mental illness and his symptoms arising from his personality problem. He stated that although Weik gets anxious and then more disorganized, it does not rise to the level to interfere with his ability to assist. R. p. 303.

Dr. Behrmann denied that Weik was ever psychotic while at Hall and stated the fact that he was offered Haldol merely suggested he was experiencing symptoms. R. p. 305. He stated that very quickly it appeared that he did not require such medication. R. p. 305. Weik advised Dr. Behrmann that he had concerns about being perceived as mentally ill, that he was not crazy and did not need to be at the hospital and thought that he smelled medication in his food and he did not want to take medication. R. p. 307.

On re-direct, Dr. Behrmann stated that Weik was eccentric with odd behavior. R. p. 307-08.

d. Dr. William Brannon

The defense presented initially Dr. William Brannon, an expert in neurology and neuropsychiatry, who performed a neurological exam on the Appellant on March 15, 1999. R. p. 266. He stated he found Weik agitated and could not keep him focused with tangential thinking. R. p. 267-68. Dr. Brannon found that his neurological tests to be normal. R. p. 268-69. He also determined that his mental status reflected a flight of ideas, inability to concentrate and tangential. R. p. 269. He discussed with him that he wished to plead guilty and hoped that his examination at Hall the same day would clear the air so he could plead guilty. R. p. 270. He said this was the only person he had ever examined who made that request. R. p. 269. He opined that Weik felt that he was actively prohibited from pleading guilty at the time of his interview. R. p. 270. He opined that Weik had no neurological problem and that his mental illness was more characteristic of a psychiatric illness than a brain dysfunction. R. p. 271. He described him as "crazy" or "abnormal", but acknowledged his consultation was to determine the existence of a neurological disorder. R. p. 271, 274.

e. Lilly Weik

The defense called Weik's mother, Lilly Weik. R. p. 275. She stated she now speaks daily with her son. R. p. 276. She described the fact he wanted to keep to himself when he grew up. She also described an incident where he got hit in the head with a brick bat, but was not taken to the hospital. R. p. 276. He was in two car accidents and in the first he had to wear a neck brace and a second where he was thrown from a truck. R. p. 277. She described problems he had in school in the 70's and his failure to attend church in the 80's because he was an atheist.

R. p. 278. She said in 1997, he wanted to be baptized and now believes in God.. She said that the Appellant knows about what happened to his father in Vietnam who was told that if he talked about it the CIA would kill him so that is why he is afraid of them. R. p. 279-80. She stated that Weik is not his normal self. R. p. 280.

f. Dr. Donna Schwartz-Watts

Dr. Donna Schwartz-Watts, a private psychiatrist, testified that she had seen Weik three times. In March 1999 she visited Weik at the jail and opined that h suffered from a thought disorder. In April 1999, she met with him at the jail for three hours and found a marked change in his mental state. She stated that he had changed his appearance from bald to have his hair grow back so he could look like the "monster that committed the crime." R. p. 311-12. Also, she found his thinking to be more open than the first interview when he was very tangential and preoccupied with religion. R. p. 313. At the second interview, she opined that she was able to elicit symptoms from him. Weik had described beginning a relationship with a woman when he joined the church, but he began to focus more on the church and his son. Weik felt she may have been sent by devil to tempt him and that he began having hallucinations in December. R. p. 314. Dr. Watts stated that he described one set with "the hag" that says very negative things about him and a second set of voices that comment on his behavior in a negative way. R. p. 314. Dr. Watts stated that it was her opinion that he had worsened. At that time, she was concerned that the events leading to the murder may have been a dissociative or depersonalization disorder and wanted Dr. Donald Morgan to assist her in clarifying it. R. p. 315.

Dr. Watts stated the next time she saw him was today (May 18, 1999). She opined that he was "worse than I've seen him." R. p. 315. She stated that Weik is adamant that he does not have a mental illness and he is open to discussing what he feels is happening to him and she felt

decompensating from the stress. She stated that while Dr. Crawford was testifying, Weik indicated to her that he disagreed with some things she said because he had not told her everything because he thinks they want him to be sent away to the hospital.

Dr. Watts opined that Weik has schizophrenia and that the stress of the trial has caused him to be less able to defend against the impulses. R. p. 316. He opined that he had delusional beliefs that the CIA and Masons may have involvement in the trial to make sure that he is killed and that his father is being persecuted by the CIA and they want him to keep quiet so they won't learn of his father's involvement in Vietnam. R. p. 317. After objection, she opined that schizophrenia was an appropriate diagnosis. She stated that he had prior suicide ideations. He advised her that it was his job "to save people" in jail until he was killed. R. p. 319.

 She opined he suffered from the disease at the time of the trial. She stated that he was always cooperative, friendly, and answered questions, but his expression of emotions, like laughter, were inappropriate. R. p. 320. She stated he became tearful and remorseful when he described the deaths. He also described fearing to eat when he was in the hospital for two (2) days because he thought medicine was being put in his food. R. p. 321. She said he put the swastika on his arm after a football injury because he thought it was a dead part of his body and the tattoo would remind him. R. p. 321.

Dr. Watts stated that he described the "hag" attacking him in September 1997. She said this may have coincided when he started working a different shift, had trouble sleeping, and his relationship with a woman. R. p. 322.

She opined that Weik did not have a rational understanding of the proceedings and was not able to assist in his defense. R. p. 322, ll. 17-19.

Upon the court's question, Dr. Watts stated she had two reasons for this opinion. First, the nature that he has been hallucinating at times and stated that he read his Bible and chanted to ward off these hallucinations and had done so throughout the (competency) proceeding. She stated Weik had told her that day he was doing so to ward off demons and hags. R. p. 323-24. Second, she declared Weik had not been forthcoming with his symptoms to some of the evaluations. She noted that while in the jail he had been able to sleep in the day time and stay awake at night. Yet, while at the hospital he was not able to sleep defensive and guarded. R. p. 324. She declared Weik was not malingering although like others with mental illnesses he was refusing medication and denying that he was ill. R. p. 325. Concerning suicidal thinking, it was her opinion that he would kill himself if he does not get the death penalty. R. p. 325, l. 23 - p. 326, l. 4.

She opined that Weik would be difficult to treat because he has refused medication.

She stated that Weik absolutely knew what he was doing when he gave a statement and she thought he was trying to make sure that he would receive the death penalty. R. p. 326. Dr. Watts stated that Weik had informed her about head injuries and a near drowning incident at age 11 where he was unconscious, yet did not receive medical treatment and an incident where a gun misfired and he was shot in the arm and lost consciousness. R. p. 327. She stated that she had met with Dr. Behrmann in March 1999. Also, she stated that Weik believed that his lawyers will be there to help him, that he trusts them, and he will help them because he believes their reason for representing him is to help him get the death penalty. R. p. 328.

On cross-examination, Dr. Watts stated that Weik was initially guarded when she saw him, but has now become more open as she sees him. R. p. 329. She declared that he has become sicker and can no longer try to appear normal. R. p. 329. As the trial progresses, she

opined that he becomes more anxious and disorganized. He has consistently in the three interviews stated that he murdered someone, that he was wrong, and that he wants the death penalty. R. p. 330. She stated that he is incompetent because he's hallucinating and delusional. She said he is not following the testimony. R. p. 330-31. She stated that this morning Weik was preoccupied with religion and in his responses would allude to the Bible. R. p. 331. She said he told them that reading his Bible was his protection against hearing voices. R. p. 332.

Dr. Watts accepted that Weik had a normal MRI, a normal neurological examination and no prior psychiatric history in clinics, schools, or hospitals. She opined that he had a serious suicide attempt in 1998 on his birthday when he wrote in a letter that he had a loaded gun and planned to kill himself and had sat in his room with gun and thought about it until his son called. R. p. 334.

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She reported that Weik had an intact family with his parents, no developmental or childhood behavioral problems, and an average IQ. R. p. 335-36. He had also maintained employment.

She stated a delusion he held about the CIA and Masons, although she admitted that his parents also feared the CIA. R. p. 337-38. She said he also had a delusion about forcible medication at Hall and about dead parts of his body. R. p. 338. She again spoke of the fact that Weik minimized hallucinations, but that sometimes he presents himself as well and does not want to appear sick. R. p. 340. She declared that if his only symptom of hallucinations were when he fell asleep or woke up that she would not consider him psychotic. R. p. 341. She stated that there was a discrepancy in his reporting to other clinicians. R. p. 343. She pointed out that his delusions before April 1998 involved his dead arm and his family being persecuted by the CIA and Masons. R. p. 345.

Dr. Watts pointed out that there may be medications to help him, but he refuses to take them. R. p. 345. She confirmed that Weik was able to define the charges, knew the duties of the judge, solicitor, and jury. R. p. 346. She stated that he trusts his attorneys, knew their function, knows the difference between a plea of guilty and not guilty, stated he's guilty because he killed his victim, and appreciates the seriousness of the charges. R. p. 347. However, she was unsure that he could control his behavior in court. R. p. 347.

Importantly, Dr. Watts testified that currently he was able to discuss relevant case facts, but also that he was markedly preoccupied with religion. To a degree of medical certainty, he sees his lawyers as a resource to help him get the death penalty and that they care about him. R. p. 348. Dr. Watts felt that he did not have the ability to follow the testimony because if he is hallucinating "he will be reading his Bible and chanting and chanting to drown out the voices" and fears if he fails to read his Bible or disagree with witnesses or control his behavior, he will be sent to the State Hospital. R. p. 349. She admitted no one had told him he shouldn't be reading his Bible. R. p. 349.

Dr. Watts testified that he had the ability and wanted to testify. She suggested that the structure of testifying would decrease the hallucinations. R. p. 350. However, she admitted that he had denied having hallucinations in court that day. R. p. 350. She said hallucinations may be witnessed by the presence of distracted eyes and bizarre motor movements. R. p. 351. She said that even though he was reading the Bible then, she did not know if he was hallucinating then. R. p. 351.

She said he is psychotic because of hallucinations or delusions and the only way she can tell if he is having delusions is because he reports them consistently. R. p. 352. She says it is common for the mentally ill to "fake well." She admitted that someone can have delusions and

hallucinations and still be competent to stand trial. R. p. 353. She stated that Weik would not trust his lawyers if he thought they were trying to get him into a hospital. R. p. 354. She stated that it was in his best interest to have a trial for justice to be done, but felt it should be done when he is not hallucinating.

g. The Appellant, John "Eddie" Weik

Weik testified in the competency hearing that he was 32. He briefly described his family, and the injuries he had as a child. R. p. 356. He stated that they were here to get it over and done with and for the victim and his family. He admitted that he understood what murder was and the punishment for it of death because "you take a life, they get to take your life." R. p. 357. He stated this came from the Bible in Mosaic law. R. p. 358. He stated he deserved to die because he took a life and it was a waste of taxpayers money to send him to prison at \$25,000 a year to house him. He stated his parents can't rest and he needs to get this over with. R. p. 358.

Weik described the fact that he has dreams. However, he stated they were wrong because "this thing came to me and [he] wasn't asleep." R. p. 359. He stated "the hag" first hit him between September and October. He stated the colored people at work were aware of this. R. p. 359. Masons don't want to have anything to do with him because he is a murderer and their oath and brotherhood won't let them. R. p. 359. He stated "the hag" had him by the neck in his bed, but he could not see it. R. p. 359, 1. 22-25. He said he told his family and friends, but no one believed him. The people at work told him it was the "hag" although he did not believe in root doctors or voodoo. R. p. 360. He stated that when it hit him he could not move or breathe and it was "like a dream." R. p. 360. He said he was cold, could not move, or shout for help. Only in the morning was he able to move, and then he heard voices saying "they're watching." R. p. 360. He said no one believed him when he told them about it. R. p. 361. After this occurred, then he

started having dreams seeing people or he had psychedelic dreams. R. p. 361-62. He testified he saw the hag one or two times a month. R. p. 363. He said he wasn't able to see his face until after he got to jail. R. p. 363. Then, he saw the face and it was like a pretty woman with curly metallic colored hair and then when he moved his head, it looked like a man, real tall, with a coat like a gown and six digits. R. p. 365. He stated the hag held him down, smiled at him and started laughing.

Weik described, in detail, a fishing trip he had with his son, Daniel, and his cousin, Sam, when he got stuck on a sand bar and saved his son from drowning. R. p. 367-75.

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He said he tried to cooperate with the doctors, but he did not want to stay there. He stated that Dr. Behrmann did not act normal and he held back answers. He talked to Dr. Shea but thought Dr. Shea had lied to him. Weik said when he got to the hospital, he thought he could smell medicine in people's food and on their body and breath. R. p. 379. Weik described his prior attempt to commit suicide when he made nooses but it broke, he could not have enough rope, or he could not get his feet off the ground. R. p. 381-82. He talked about when he lost his job, how he lost his job and how he went to his room, started thinking about death and thought about using the shotgun or .22, but his other kept knocking on his door. R. p. 384-85. He said that he tried to tell his son he still had a job. R. p. 386.

On cross-examination, Weik described correctly the role of the solicitor, the charges he had, what murder meant, the job of the judge ("to be neutral, hear the evidence"), the jury ("twelve people of my peers that's supposed to hear the evidence and made a decision"), his lawyers, the difference in a guilty plea and not guilty plea and whether his crimes were serious. R. p. 388. He stated that he could control his behavior in court, and that he had told his lawyers what happened. R. p. 388-90.

Weik stated that he had paid vague attention to the prior testimony of the psychiatrists because it was in the Lord's hands. R. p. 390. He stated that he could listen to the testimony if he wanted to, but he thought this was a waste of taxpayer money. R. p. 392. He said he wanted justice to be done. He said Satan is all around 24 hours a day. R. p. 394. He described the "hag" as being seen by him only 2 times. He denied that the hag was there when Weik asked if he had heard the doctors and gave "no comment." R. p. 395.

h. Dr. Donald Morgan

Dr. Morgan, a forensic psychiatrist, testified that he was referred to Weik by Dr. Schwartz-Watts because of her concerns about the dissociative state. R. p. 398. In interviewing Weik, he stated it was clear to him that he was very ill, delusional, had a paranoid system, and that they should not go forward. R. p. 399. Dr. Morgan stated Weik was delusional about his father who he claimed was dishonorably discharged from the Marines and the CIA had harassed his family since then so his father would not speak of his Viet Nam experience. R. p. 400. However, his father was discharged for psychiatric reasons, so this is one delusion. R. p. 400. Dr. Morgan stated Weik said the ATF harassed them over a gun and they were being tracked by a computer, but the ATF did come to inquire about a gun sale so this showed another "delusion." R. p. 400.

Dr. Morgan confirmed that Weik stated to him that the outcome should be based on Mosaic law and was hyper-religious, but that does not mean delusional. R. p. 401. He opined that Weik had been psychotic two weeks before at a Jackson v. Denno hearing because he later told him he had to chant so that the voices don't bother him. R. p. 401-02.

Dr. Morgan opined that Weik had schizophrenia - paranoid type. R. p. 402. He also suggested he had a disorder of thought even in face to face interviews unless you constantly

structure him. R. p. 403. He said he had problems back to 1997 when the hag hit him. R. p. 404. Weik attempts to control the hag by altering normal sleep habits. R. p. 404.

Dr. Morgan opined that Weik could not assist counsel because he was preoccupied with warding off the voices. R. p. 405. He stated he had to read the Bible and chant to ward off the voices and could not assist them at the time. R. p. 405.

Dr. Morgan stated that morning Weik's affect was "totally inappropriate." He stated Weik stated he knew Morgan knew he was praying because his hair stood up, but he did not see it. R. p. 407.

In assessing that Weik was currently not competent, he opined that treatment would require neuroleptics, psychotherapy, and working within his religious set. R. p. 407.

Dr. Morgan said he received information that his father also suffered from schizophrenia. R. p. 412.

On cross-examination, Dr. Morgan conceded that you could have delusional beliefs and still be competent. R. p. 412. He related that the delusions about the CIA and Masons should not be on his jury and became confused when confronted about how he could identify them. R. p. 413. He related that the boat story given to him was the same story defense counsel asked him on direct and repeated the same story almost exactly. R. p. 414-15. (See, R. p. 367-75).

Dr. Morgan stated that the fact that he reads the Bible and chants to keep away the voices is what interferes with his ability to communicate. R. p. 418-19. He admitted that Weik reported in court today that he was not hearing voices. R. p. 419. Dr. Morgan further admitted that Weik had a factual understanding of the proceedings against him. R. p. 421. He also admitted that Weik could disclose relevant facts to his counsel, sees his lawyers as a legal resource, accepts that advice, but would not accept a plea bargain because he sees it as wrong, but understands the

concept. R. p. 423. However, Dr. Morgan stated his illness causes him to not think rationally because he is preoccupied with controlling the symptoms so that he is not sent to the hospital. R. p. 424. He admitted that Weik had the ability to testify and give structured answers to questions. R. p. 426.

1. Dr. Crawford on Reply

Dr. Crawford testified that she was present through the testimony. It was her opinion that the preoccupation with warding off auditory hallucinations would not prevent him from working with his lawyers. R. p. 429.

2. May 19 Order Finding Competency to Stand Trial

On May 19, 1999, Judge Shuler opined that Weik was competent to stand trial. R. p. 454-72. The judge initially opined that there was no issue on whether he knew the difference between right and wrong (sanity) and whether or not he had the capacity to conform his conduct to the requirement of law. R. p. 456. On the competency to stand trial question, Judge Shuler stated that Weik has a problem. The Court noted that Weik was reading his Bible with his lips or talking to himself. R. p. 458. The Court noted that during Weik's testimony he was asked by counsel to recount the fishing story and did so for an extensive period which indicated to the court that his thought process was not fragmented and Weik could order his thoughts. R. p. 460. The court also noted from Dr. Schwartz-Watts testimony that when a person is having delusions, he may be seen by third parties. However, the Court found that he had not seen that from Weik who was quietly reading his Bible. R. p. 461. However, he also showed little emotion when his mother cried. R. p. 461. The Court also noted Weik's reliance on comments similar to the Apostle Paul that things were in God's hands. R. p. 462.

The Court noted the burden was on the State to prove Weik competent to stand trial. R.

p. 463. The Court concluded that Weik was competent for the following reasons:

1. When Weil testified, upon questioning by the solicitor he revealed he vaguely heard the others testimony, although he had appeared to only be reading. R. p. 464, ll. 17-18.
2. Weik was not disinterested in the proceedings and was aware of what was going on around him. R. p. 464, l. 17 - p. 465, l. 6.
3. Weik declared in his testimony he was not crazy and said he was aware of the things being said about him. R. p. 465, ll. 12-18.
4. Although there was a problem, the Court opined that "I honestly believe that if he wanted to aid in his defense he might do so." R. p. 466, ll. 9-13.
5. The Court noted that during the proceedings, the Appellant may need a further explanation as to what was going on or said about him. R. p. 466, ll. 14-24.
6. The Court noted that Weik's statement to the police removes any defense, but he has the right to require the state to put up his proof. R. p. 467, ll. 14-19.
7. Even if Weik does not want to aid his defense because he believes he should be tried and sentenced under Mosaic law, he has the right to feel that way. R. p. 468.

Judge Shuler also noted that there was no evidence presented that he was delusional when he gave his statement. R. p. 468-69. The Court noted that Weik had symptoms of both

schizotypal personality and schizophrenic, but found there was no evidence that he had problems during his statement which he found freely and voluntarily made. R. p. 469-71.

3. Weik's Guilt Phase Trial Testimony in front of the jury.

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Weik testified in the guilt phase of his trial. R. p. 1634-1711. He stated he vaguely remembered April 30, 1998, yet described his own actions on that date. R. p. 1634-37. He stated that he spoke to his son on telephone about an earlier school conversation that he had concerning another student picking on him. R. p. 1637-39. He described his conversation with Daniel and particularly that during the conversation he was told he had to go and that they did not want him talking on the phone. R. p. 1639-40. He stated that his mother and John (her fiancé) did not want him talking on the phone with Weik because they are jealous. R. p. 1640. Weik described word for word his recollection of the rest of the telephone conversation. R. p. 1640-41. Fearing that his son would not answer the phone or want to have anything to do with him, Weik then left the house in his truck towards Summerville toward the bank to get money for insurance for his mother and gas money. R. p. 1642. While at the gas station, he decided he needed to see his son. R. p. 1643. He then went to the Krasae residence and describes seeing the family in the yard. He enters the house and apologizes to his son who told him he could not talk. R. p. 1645. His mother then comes in and he described the verbal confrontation. R. p. 1645-46. He stated that he returned to his truck to start to leave and heard a voice say "kill yourself, you lost everything, you idiot good for nothing" and another state "ten to 20 years, life or death." R. p. 1647. He stated that he stopped and got his shotgun out which was loaded and was in the house. R. p. 1649. He described seeing himself there. R. p. 1649-50. He then described shooting her. R. p. 1650. He said it was like a dream, but one he could not wake up from because he did it. He then describes leaving, smelling gun powder, starting thinking about

killing himself, but then heard Susan's father and left. He described leaving and heading toward the police. R. p. 1653. He described in detail being stopped by the police and his actions at that time. R. p. 1654-1666.

Weik stated that when he went to Susan's home, his intent was to apologize to his son. R. p. 1656-57. He denied having ill feelings toward her. R. p. 1657-58.

On cross-examination, Weik responded directly to his questions and stated that he was trying to respond "in the fullest detail." R. p. 1668. He denied telling Mr. Hall that he was going over to Susan's home. R. p. 1671. He again attempted to describe the events in response. R. p. 1675-1706. The Appellant was asked about the detail of his statement to the police. R. p. 1682-84. He stated that most of his statement was true. R. p. 1684-1706. He stated that in the statement he did not say anything about "the voices" and left out some things. He stated he did not feel anything when he shot her. R. p. 1687. He stated that when he described that he popped another shell in her and that it felt good and that "it felt better" on the next shot was in the statement, but he now claimed he was lying. R. p. 1690-91.

4. The Request for a New Competency Hearing

After Weil testified, the defense closed its case. R. p. 1707. The defense advised the court that Weik did not intend to make a personal closing argument and he advised the court that he did not intend to do so. R. p. 1710-11.

A lunch recess was then taken. Counsel for Weik came to the court and advised the court that Weil had some questions about ways of pleading guilty and that the court had advised counsel that if he pleads guilty the judge, not the jury sentences. R. p. 1711-12. At that time, Weik was questioned by the court about the options and expressed a desire to plead guilty and have the judge sentence. R. p. 1715. The court further described the requirement for sentencing

and aggravating factors. R. p. 1716. Defense counsel requested to speak to Weik for a few moments after the court's inquiry. The court further discussed the unanimous jury concept for a death sentence and further discussed the burden of proof. R. p. 1718-20.

After another break, counsel Beauford requested an immediate Blair hearing. R. p. 1720. He based this on the assertion that Weik had conveyed some things to them that they felt uncomfortable about. R. p. 1720-21. They described "voices telling him what to do" and things of that nature. R. p. 1720-21.

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Judge Shuler denied the request. R. p. 1721-34. Judge Shuler recounted that he had earlier ruled him competent to stand trial and rejected the assertion that he could not aid in his defense because he had to read the Bible and chant and kept hearing voices. R. p. 1721, ll. 19-21. The Court noted that once the trial began, Weik began paying attention to everything that was said and put down his Bible. R. p. 1722.

The Court found after his testimony this date that he was competent to stand trial. R. p. 1722-23. He rejected the assertion from his actual testimony that his thoughts were fragmented or that he could not aid in his defense. R. p. 1723. The trial judge went through his notes of the testimony and witnesses and commented that Weik was listening and interacting with his counsel as to each one until Mr. Burnett's testimony. R. p. 1723-27. Judge Shuler noted then that Weik became upset, opened his Bible, and began to read. R. p. 1727. Mr. Gamache was called again to testify. R. p. 1728-29. He stated that he listened calmly and intently as the testimony was presented from Mr. Van Doran. R. p. 1728-29.

The Court opined that he must conclude that Weik was competent to stand trial and that he also believed that he was at a point of facing a decision from a jury that he did not want to hear. R. p. 1729. The Court determined that the claim he was saying he was hearing voices now

was not enough to stop the trial. R. p. 1730. The Court noted that the defense psychiatrist were wrong when they declared Weik could not follow the testimony or aid in his defense. R. p. 1730, 11. 13-18. Further, it was obvious that Weil could testify and has aided his defense throughout the trial. The Court, in context, opined that if Weik was hearing voices at this point it was understandable in his situation. R. p. 1731. He then denied the request for the Blair hearing.

Further, the issue of whether he suffered from a mental illness or lacked sufficient capacity to conform his conduct was not presented to the jury by the evidence in the case. There was no evidence that the Appellant has pointed to in the State's case that suggested either a mental illness or his action arising from an irresistible impulse. To the contrary, the State's evidence revealed Weik's intent pre-existed by the comments to Hall, the securing of a loaded weapon to the car, the verbal agreement. Then destruction of his son's mother by four shotgun blast, each causing him to feel better. Unlike Campen, there was no history of any mental illness presented to the jury.

The Applicant's apparent reliance upon the voices and that he could not get back out of the house did not evidence GBMI to require an instruction on GBMI. It is obvious that the voices did not tell him to murder his wife and he does not make that claim. To the contrary, he claims they told him to kill himself, an act that he was able to resist. Further, his claim that he could not get out of the house does not equate with GBMI by lacking substantial capacity to conform his conduct to the requirements of law. He has failed to show any entitlement to this instruction.

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

C. Failing to Offer Evidence of Manslaughter

In his third specification, he claims that counsel erred in failing to offer evidence of manslaughter. The record reveals that at the conclusion of the guilt phase, counsel Beauford moved for a manslaughter instruction, which the trial judge denied. R. p. 1736-37. He now relies upon the penalty phase testimony of the decedent's daughter, Amber Krasae, to assert that there was evidence of manslaughter available, but not used.

Amber Krasae testified in the penalty phase that she was 8 years old and attended Knightsville Elementary School in the second grade. R.p. 1835. After general qualification, she testified that she was home after school with her brother Daniel watching T.V. R. 1838. She saw her mother go over to her grandfather's home next door. The Applicant then came to her home when she was outside with her brother. He had been driving a truck. She testified that her mother came over from next door and "they started pushing each other" on the porch of the trailer. R. 1839-40. Then she said she went inside with Daniel. She stated her mother then came into the house and shut the screen door and she overheard her mother state: "If you don't leave, I'm going to call the police." R. 1841. She stated the Applicant then went to the back of the truck and got a gun. R.p. 1841. "I saw Eddie get a gun, he came to the house and he threw open the screen door. And then I was about to go to Daniel's room and Daniel was right in front of me so I ran to the bathroom..." with Daniel because there was no where else to run. R.p. 1842-43. She tried to shut the door, but could not since there was a shoe hanger on the door. She stated: "I saw him shoot her" more than once and call her a "motherfucker." R.p. 1843-44. Weik then left and they ran outside and a woman from across the street came over and called the police. R.p. 1844-45. The defense asked no questions of this witness. R.p. 1845.

In his pleadings, he contends that this was evidence of manslaughter that should have been presented in the guilt phase to support an instruction on manslaughter. In his statement to the police, Weik stated that he exchanged words with the victim on the porch. Statement, p. 11. In the guilt phase, Weik testified that he went to the Krasae residence and describes seeing the family in the yard. He enters the house and apologizes to his son who told him he could not talk. R. p. 1645. His mother then comes in and he described the verbal confrontation. R. p. 1645-46. He stated that he returned to his truck to start to leave and heard a voice say "kill - yourself, you lost everything, you idiot good for nothing" and another state "ten to 20 years, life or death." R. p. 1647. He stated that he stopped and got his shotgun out which was loaded and was in the house. R. p. 1649. He described seeing himself there. R. p. 1649-50. He then described shooting her. R. p. 1650. He said it was like a dream, but one he could not wake up from because he did it. He then describes leaving, smelling gun powder, starting thinking about killing himself, but then heard Susan's father and left. He described leaving and heading toward the police. R. p. 1653. He described in detail being stopped by the police and his actions at that time. R. p. 1654-1666.

Weik testifies: "...she didn't touch me, but she's shaking the finger in my face, you know, calling me these words and stuff like that." R.p. 1646, ll. 8-10. However, she stated that she cursed him while he was there. R.p. 1675.

The law to be charged must be determined from the evidence presented at trial. State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000). In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in a light most favorable to the defendant. State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996). "To warrant a court's eliminating the offense

of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Cole, at 101, 525 S.E.2d at 513.

Manslaughter is defined as "the unlawful killing of another without malice." S.C.Code Ann. § 16-3-50 (Supp.2000); Carter v. State, 301 S.C. 396, 398, 392 S.E.2d 184, 185 (1990). Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing. The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence. State v. Cole, at 101-02, 525 S.E.2d at 513 (internal citations omitted). Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter. State v. Hughey, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000); State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951) (citing State v. Davis, 50 S.C. 405, 27 S.E. 905 (1897)).

Where death is caused by use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation. Id. at 104, 64 S.E.2d at 134. Rather, when death is caused by the use of a deadly weapon, the opprobrious words must be accompanied by the appearance of an assault--by some overt, threatening act--which could have produced the heat of

passion. State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993) (citing State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946)).

He has failed to show ineffectiveness either by deficient performance or by Sixth Amendment prejudice. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

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42
The Applicant, in his fourth specification cites Frett v. State, supra., and asserts that the ineffectiveness was pervasive and he is entitled to relief. This claim lacks any specificity. As set forth above the burden of proof is upon the Applicant to satisfy the standards of Strickland v. Washington, supra. This broad contention fails to state with adequate specificity what the alleged deficiencies were and what evidence was either not developed or presented in mitigation. This failure to present a clear factual basis in the Application, rather than a broad legal conclusion, prevents the Respondent from adequately responding to the allegation. Pursuant to SCRPC, Rule 12(e), Respondents herein move this Court for a more definite statement in a timely manner or to strike the allegation because it is too vague and ambiguous. The Respondents cannot be expected to reasonably respond to the broad claim without a precise statement as to what evidence the Applicant now claims existed at the time of trial that should have been used.

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel set forth above. As to all other allegations, the State 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.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina

 3, 2003.

Federal Cases

Barnes v. Thompson, 58 F.3d 971, 978 (4th Cir. 1995)	7
Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995)	7
Matthews v. Evatt, 105 F.3d 907, 919-920 (4th Cir. 1997)	7
Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996)	6
North Carolina v. Alford, 400 U.S. 25 (1970)	11
Plath v. Moore, 130 F.3d 595 (4th Cir. 1997)	8
Savino v. Murray, 82 F.3d 593, 598 (4th Cir. 1996)	6
State v. John Edward Weik, Op. No. 25556, 2002 WL 2008242 (SCSCT Sep. 3, 2002)	4
Strickland v Washington, 466 U.S. 668 (1984)	6, 7

State Cases

Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985)	6
Carter v. State, 301 S.C. 396, 398, 392 S.E.2d 184, 185 (1990)	41
Frett v. State, 298 S.C. 54, 378 S.E.2d 249 (1988)	5, 42
Gaines v. State, 335 S.C. 376, 517 S.E.2d 439 (1999)	11
Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)	7
Jones v. State, 332 S.C. 329, 504 S.E.2d-822 (1998)	7, 8
Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999)	11
Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983)	13, 38, 42
Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995)	11
Singletary v. State, 281 S.C. 444, 316 S.E.2d 369 (1984)	14
State v. Allen, 261 S.C. 448, 200 S.E.2d 684 (1973)	12
State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996)	40
State v. Campen, 321 S.C. 505, 469 S.E.2d 619 (S.C. App. 1996)	13
State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)	40, 41
State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951)	41
State v. Hicks, 330 S.C. 207, 499 S.E.2d 209 (1998)	14
State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993)	13
State v. Huggins, 336 S.C. 200, 519 S.E.2d 574 (1999)	13
State v. Hughey, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000)	41
State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993)	42
State v. Ray, 310 S.C. 431, 427 S.E.2d 171 (1993)	11
State v. Rimert, 315 S.C. 527, 446 S.E.2d 400 (1995)	14
State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528	12
State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (S.C. App. 1996)	14
State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992)	10, 13

State Statutes

S.C. Code Ann. ' 17-27-70	42
S.C.Code Ann. § 16-3-50 (Supp.2000)	41

State Rules

SCRCP, Rule 12(e)	42

03-CP-18-1070

Applicant,

V.

CERTIFICATE OF SERVICE

State of South Carolina,

Respondent.

I, Lonetta B. Brawley, do hereby certify:

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

Norbert E. Cummings, Jr., Esquire
100 S. Main Street, Suite B
Summerville, South Carolina 29483

Darrell T. Johnson, Jr., Esquire
Post Office Box 1125
Hardeeville, South Carolina 29927

DATED this 6th day of October, 2003.

~~LONETTA B. BRAWLEY~~

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

John Edward Weik, SK
Applicant,)

V.)

State of South Carolina
Respondent.)IN THE COURT OF
COMMON PLEASAmended Application for
Post-Conviction Relief
03-CP-18-1070CLERK OF COURT
DORCHESTER COUNTY
Cheryl Williams

2003 JUN 19 AM 11:51

CLERKED COPY

1. Place of Detention: Lieber Correctional Institution, Post Office Box 205, Ridgeville, S.C. 29472.
2. Name and location of Court which imposed sentence: M. Duane Shuler, Circuit Court Judge.
3. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - (a). 98-GS-18-749--Murder.
 - (b). 98-GS-18-750--First Degree Burglary.
4. The date upon which sentence was imposed and the terms of sentence:
 - (a). May 29, 1999-Death for Murder.
 - (b). May 29, 1999-Life for Burglary.
5. Check whether a finding of guilty was made
 - (a). After a plea of guilty--no.
 - (b). After a plea of not guilty--yes.
 - (c). After a plea of nolo contendere--no.
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
7. If you answered "yes" to (6), list
 - (a). the name of each Court to which you appealed:

ATTORNEY GENERAL'S OFFICE

RECEIVED

6-22-06

ADMINISTRATIVE SERVICES DIVISION

FILED

HAVE COPIES

ROUTE TO

- i. Opinion--Affirmed--South Carolina Supreme Court
- ii. Petition for Writ of Certiorari Denied - United States Supreme Court.
- iii. N/A.

(b). the result in each such Court to which you appealed:

- i. Opinion - Affirmed - South Carolina Supreme Court.
- ii. Petition for Writ of Certiorari Denied - United States Supreme Court.
- iii. N/A.

(c). the date of each such result:

- i. September 3, 2002.
- ii. June 16, 2003.
- iii. N/A.

(d). if known, citations of any written opinion or orders entered pursuant to such results:

- i. 2002 WL 2008242.
- ii. Cert. denied 2003 WL 1948540 (U.S.S.C.)
- iii. N/A.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a). N/A.

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a). Applicant received ineffective assistance of counsel during the trial of his case inasmuch as counsel failed to proffer psychiatric testimony and evidence in support of their motion for a second Blair/competency hearing. *Strickland v. Washington*, 448 U.S. 668 (1984); *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); *State v. Burgess*, 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003); *State v. Drayton*, 270 S.C. 582, 243 S.E.2d 458 (1978); *Hughes v. State*, 367 S.C. 389, 626 S.E.2d 805 (2006).

(b). Applicant received ineffective assistance of counsel inasmuch as counsel failed to offer a guilty but mentally ill defense during the guilt-or-innocence phase of his trial. *Strickland v. Washington*, *supra*; *State v. Hartfield*, 300 S.C. 469, 388 S.E.2d 802 (1990); S.C. Code Statute 17-24-20.

- (c). Applicant received ineffective assistance of counsel inasmuch as counsel failed to provide evidence of Applicant's background to defense experts when such evidence was readily available. *Strickland v. Washington, supra; Williams v. Taylor*, 529 U.S. 362 (2000).
- (d). Applicant received ineffective assistance of counsel inasmuch as counsel failed to provide evidence of Applicant's background to the State's experts when there is a reasonable probability that such evidence would have changed the opinions rendered by the State's experts. *Strickland v. Washington, supra, Williams v. Taylor, supra*.
- (e). Applicant received ineffective assistance of counsel inasmuch as counsel failed to object to the trial judge's erroneous jury charge that malice could be implied from the use of a deadly weapon. *Strickland v. Washington, supra; Yates v. Evatt*, 500 U.S. 391 (1991).
- (f). Applicant received ineffective assistance of counsel inasmuch as counsel failed to object to the solicitor's offering expert testimony from Earl Asbell during the guilt phase when this witness had never been qualified in the area of blood spatter. *Strickland v. Washington, supra; McDill v. Mark's Auto Sales*, 626 S.E.2d 52 (2006).
- (g). Applicant was denied due process of law and a fair sentencing determination based on the state's used of "torture" as an aggravator which, as defined under South Carolina law, is unconstitutionally overbroad. U.S. Const. Amend. V, VIII, and XIV, the South Carolina Constitution, and federal and state law.
10. State concisely and in the same order the facts which support each of the grounds set out in (9)(a)-(j):
11. 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-conviction relief? No.
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - (i). N/A.
 - (b) the name and location of the Court in which each was filed:
 - (i). N/A.
 - (c) the disposition thereof:
 - (i). N/A.
 - (d) the date of each such disposition:
 - (i). N/A.
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - (i). N/A.
13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
14. If you answered "yes" to (13), identify:
- (a). which grounds have been presented:
 - (i). N/A.
 - (b). the proceedings in which each ground was raised:
 - (i). N/A.
15. If any ground set forth in (9) 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:
- (a). Not ripe for adjudication.
16. Were you represented by an attorney at any time during the course of:
- (a). Your arraignment and plea? Percy Beauford and Marva Hardee Thomas, Esquires.
 - (b). your trial, if any? Percy Beauford and Marva Hardee Thomas, Esquires
 - (c). your sentencing? Same as trial.
 - (d). your appeal, if any, from the judgment of conviction or imposition of

sentence? Robert M. Dudek, Esquire.

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Percy Beauford, 204 N. Live Oak, Monks Corner, S.C. 29461.
- ii. Marva Hardee Thomas, 130 E. Richardson Ave., Summerville, S.C. 29483.
- iii. Robert M. Dudek, 1205 Pendleton St., Rm. 306, Columbia, S.C. 29201.

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

- i. Arraignment, trial and sentencing.
- ii. Arraignment, trial and sentencing.
- iii. Appeal to the South Carolina Supreme Court and United States Supreme Court.

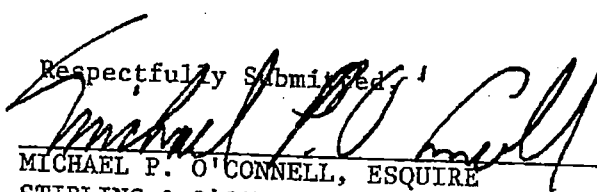
18. State clearly the relief you seek in filing this application.

A new trial and/or sentencing proceeding.

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

No.

Respectfully Submitted,


 MICHAEL P. O'CONNELL, ESQUIRE
 STIRLING & O'CONNELL
 145 King Street, Suite 410
 Charleston, SC 29401
 (843) 577-9890
 ATTORNEY FOR APPLICANT

DATED: 6/15/86

LISA KIMBROUGH, ESQUIRE
 ATTORNEY FOR APPLICANT

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

JOHN EDWARD WEIK, #5068)
Applicant,)

C/A No. 03-CP-18-1070

vs.)

RETURN TO AMENDED APPLICATION
FOR POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA,)
Respondent.)

The Respondents, above-named, hereby make a return to the amended application for post-conviction relief filed by Michael P. O'Connell on June 19, 2006. This application amended the application filed by Robert M. Dudek of the South Carolina Office of Appellate Defense on behalf of the Applicant, John Weik on June 19, 2003. On July 9, 2003, the South Carolina Supreme Court entered an order assigning the Honorable Perry M. Buckner, Circuit Court Judge to the matter. On September 22, 2003, Judge Buckner entered an order appointing Norbert Cummings and Darrell Thomas Johnson to represent the Applicant in the matter. Subsequently, Michael P. O'Connell and Walter Cox were appointed. On June 8, 2005, Mr. Cox was relieved from appointment due to a conflict within his office by the employment of former Solicitor Robert D. Robbins. The Court appointed Lisa Kimbrough to replace Mr. Cox. **This matter is currently set for an evidentiary hearing before Judge Buckner beginning September 18, 2006.**

Respondents would note at the outset that they have requested under S.C. Rule of Civil Procedure, Rule 12(e), greater particularity and specificity under claims 9(a), 9(c), and 9(d), because his broad general claims are refuted by the record otherwise and must be dismissed.

Further, ground 9(b) can be dismissed where there is no showing of the existence of "guilty but mentally ill" potential verdict based upon the evidence at trial, including Weik's own testimony which conclusively revealed his capacity to conform his conduct to the requirements of law. Further, Weik cannot meet his burden concerning the malice instruction as ineffective assistance of counsel claim 9(e) since the particular instruction was consistent with South Carolina and federal law and even if error, it would be harmless beyond a reasonable doubt as set forth herein. Finally, his allegation 9(g); a free-standing constitutional claim that the aggravating factor of physical torture as vague, is barred from consideration as a trial issue and alternately does not provide a ground for relief due to the existence of the remaining burglary aggravating factor under the recent U. S. Supreme Court decision in Brown v. Sanders, --- U.S. ---, 126 S.Ct. 884, 163L.Ed.2d 723 (2006) and nevertheless is a valid factor under Smith v. Moore, 137 F.3d 808 (4th Cir.1998).

The Respondents make the following in an amended return, incorporating by reference the documents previously provided to the Court:

I.

On July 16, 1998, a Dorchester County Jury indicted John Edward Weik for Dorchester County for murder (98-GS-18-0750) and burglary in the first degree (98-GS-18-749). The State subsequently served notice of intent to seek the death penalty on July 20, 1998.

A. Statement of Facts

The Applicant, John E. Weik, had a relationship with Susan Krasae when she was about 17 years old. As a result, they had a son, Daniel, who was around ten years old when her death occurred.

Susan had custody of Daniel after their relationship ended. She later married, had a second child, Amber, and divorced Amber's father. At the time of the incident, Susan was living with her two children and fiancé in a mobile home next door to her father, Carl Hutto. Weik had not seen his son for nearly nine (9) years. During the year of the crime he began seeing his son.

On April 30, 1998, John Weik lived with his parents in Moncks Corner. The day before he told his co-worker that he was having trouble with his son and that if he does not come back to work something happened. He called his son, Daniel, on the telephone. Daniel told him that "I can't see you anymore", after he tries to get his son to choose between them. After the call, Weik got into his truck, armed with a loaded shotgun and drove to the Krasae trailer. An argument occurred. Ms. Krasae returned to the inside of her trailer with her children. Weik went to his truck, got a 12 gauge semiautomatic shotgun, which was loaded, and returned to the trailer. He kicked the door open the victim had closed and shot Susan Krasae four (4) times with double aught buckshot. She died as a result.

Weik got into his truck and drove off. After a short distance he was stopped. The Appellant subsequently gave statements to the law enforcement admitting his involvement in the crime.

Procedural History

Percy Beauford and Marva A. Hardee-Thomas represented the Applicant. Solicitor Walter M. Bailey, Jr., Robert D. Robbins, and B. Harrison Bell represented the Respondents. A pretrial hearing was held on May 5, 1999. A competency hearing was held on May 18, 1999 before the Honorable M. Duane Shuler, Presiding Judge. Judge Shuler held that Weik was competent to stand trial on May 19, 1999.

Jury selection began on May 24, 1999. On May 26, 1999, the trial began before Judge Shuler and jury. On May 27, 1999, the jury found Weik guilty of murder and burglary in the first degree. On May 29, 1999, the penalty phase began. The jury found beyond reasonable doubt the existence of the statutory aggravating circumstances of physical torture and burglary in the first degree; and recommended the death sentence. Judge Shuler then sentenced Weik to death for the murder conviction. He sentenced him to life imprisonment for burglary in the first degree.

Weik appealed to the South Carolina Supreme Court. On appeal, Robert M. Dudek of the South Carolina Office of Appellate Defense represented him. In the appeal, the following questions were raised by Weik:

- I. Whether the judge erred by refusing to hold a competency hearing during the guilt stage of the trial when defense counsel informed the judge Appellant was hearing voices, counsel had serious reservations about Appellant's ability to make rational decisions and assist counsel, and the judge had a continuing duty to assure Appellant was competent to stand trial?
- II. Whether the trial judge erred by refusing to accept Appellant's plea of guilty but mentally ill where the judge had already heard evidence Appellant was mentally ill, and his truncated misleading colloquy with Appellant about the meaning of "malice" was insufficient to justify the refusal to accept that plea once the jury already knew of it?
- III. Whether the judge erred by ruling Appellant was competent to stand trial where even the State's experts testified Appellant was not "faking", he was relating "bizarre information" to the doctors, where Dr. Schwartz-Watts and Dr. Morgan testified Appellant was not competent, and Dr. Brannon testified Appellant was "crazy", since the judge abused his discretion by finding Appellant competent given this evidence.
- IV. Whether the judge erred by failing to instruct the jury on the law of guilty but mentally ill where the judge earlier stated he would submit that verdict form, and there was evidence Appellant was hearing voices, felt unable to "get back out" of the house before he shot the decedent, and felt outside his body at the time he shot the decedent?

- V. Whether the judge erred by admitting State's penalty exhibits 1-12, particularly State's 8, 9, & 11, since they are very gruesome photographs, and their probative value was far outweighed by their unduly prejudicial effect?
- VI. Whether Appellant's death sentence should be vacated as disproportionate to other death penalty cases since this was a domestic crime, the aggravating circumstances were only technically applicable, and Appellant was mentally ill?

The South Carolina Supreme Court on September 3, 2002, initially affirmed the conviction and sentence. State v. John Edward Weik, Op. No. 25556, 2002 WL 2008242 (SCSCT Sep. 3, 2002). A petition for rehearing was filed and granted on October 10, 2002. After argument, on January 9, 2003, the South Carolina Supreme Court adhered to its original decision.

The Applicant made a petition for writ of certiorari to the United States Supreme Court in the direct appeal. In the petition, he raised the following question presented:

"Whether the South Carolina court's refusal to make a competency inquiry when informed that the mentally ill Petitioner was hearing voices instructing his what to do at a critical point during his death penalty trial violated Pate v. Robinson, 383 U.S. 375 (1966)?"

On June 16, 2003, the Court denied the petition. Weik v. South Carolina, 539 U.S. 930 (June 16, 2003).

Respondents attached and incorporated by reference the following documents to the original Return made October 6, 2003. Respondents incorporate by reference those materials in this response:

1. Record on Appeal – 5 volumes
2. Written Tapes Statement of John Weik.
3. Final Brief of Appellant.
4. Final Brief of Respondent.

5. Final Reply Brief of Appellant.
6. State Exhibit 67
7. State Exhibit 62.
8. Evidence transfer sheet.
9. April 30, 1998 traffic stop statement of Weik.
10. 911 Dispatch Tape Summary – Photos of Car (4).
11. Evidence transfer.
12. Appeal Notice documents, including notice of appeal, sentencing sheets, indictments, and verdicts.
13. Transcript of service of death penalty notice. July 20, 1998.

II.

Mr. Weik filed his initial application for post-conviction relief in Dorchester County on June 19, 2003 application for post-conviction relief in Orangeburg County, through appellate counsel Dudek. In the application, it was alleged that he received ineffective assistance of counsel.

Particularly, he alleged:

9. Ineffective assistance of counsel in derogation of the Sixth Amendment to the United States Constitution.
 - A. Defense counsel was ineffective, in violation of the Sixth Amendment to the United States Constitution, for failing to comply with the statutory requirements necessary for the Court to accept a guilty but mentally ill plea from petitioner. The South Carolina Supreme Court refused to address this issue on appeal due to defense counsel's ineffectiveness. **[Deleted in Amended Application]**.
 - B. Defense counsel was ineffective, in violation of the Sixth Amendment to the United States Constitution, for failing to request that the Court charge guilty but mentally ill as a verdict form during the guilt phase. Counsel's

- ineffectiveness caused the Supreme Court to refuse to address this issue on direct appeal. **[Deleted in part in Amended Application].**
- C. Defense counsel was ineffective in violation of the Sixth Amendment to the United States Constitution, by failing to offer available evidence of voluntary manslaughter. The decedent's daughter testified at the penalty stage of the trial, that the decedent and petitioner were involved in a physical altercation immediately before the shooting. This available evidence of heat of passion and a sufficient legal provocation would have caused the trial court to charge the jury on voluntary manslaughter, and could have averted a death penalty case. **[Deleted in Amended Application].**
- D. Defense counsel's ineffectiveness was so pervasive that it violated petitioner's Sixth Amendment right, and also the South Carolina standard under Frett v. State, 298 S.C. 54, 378 S.E.2d 249 (1988). **[Deleted in Amended Application].**

The Respondents made a Return to the original application on October 6, 2003. On June 19, 2006 and Amended Application was filed.

In his amended application filed June 19, 2006, he makes the following allegations:

- 9(a). Applicant received ineffective assistance of counsel during the trial of his case inasmuch as counsel failed to proffer psychiatric testimony and evidence in support of their motion for a second Blair/competency hearing. Strickland v. Washington, 448 U.S. 668 (1984); State v. Blair, 275 S.C. 529, 273 S.E.2d. 536 (1981); Matthews v State, 358 S.C. 456, 596 S.E.2d 49 (2004); State v. Burgess, 356 S.C.572, 590 S.E.2d 42 (Ct. App. 2003); State v. Drayton, 270 S.C. 582, 243 S.E.2d 458 (1978); Hughes v. State, 367 S.C.389, 626 S.E.2d 805(2006). **[FAILURE TO PRESENT PSYCHIATRIC EVIDENCE CONCERNING INTERVENING COMPETENCY TO STAND TRIAL].**
- 9(b). Applicant received ineffective assistance of counsel during the trial of his case inasmuch as counsel failed to offer a guilty but mentally ill defense during the guilt -or- innocence phase of his trial. Strickland v. Washington, supra.; State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990); S.C. Code Section 17-24-20. **[FAILED TO OFFER GBMI DEFENSE].**
- 9(c). Applicant received ineffective assistance of counsel during the trial of his case inasmuch as counsel failed to provide evidence of Applicant's background to defense experts when such evidence was readily available. Strickland v Washington, supra.; Williams v. Taylor, 529 U.S. 362 (2000). **[FAILED TO PROVIDE BACKGROUND EVIDENCE TO DEFENSE EXPERTS]**
- 9(d). Applicant received ineffective assistance of counsel during the trial of his case inasmuch as counsel failed to provide evidence of Applicant's background to the State's

experts when there is a reasonable probability that such evidence would have changed the opinions rendered by the State's experts. Strickland v Washington, supra.; Williams v. Taylor, 529 U.S. 362 (2000). **[FAILED TO PROVIDE BACKGROUND INFORMATION TO STATE EXPERTS].**

9(e). Applicant received ineffective assistance of counsel inasmuch as counsel failed to object to the trial judge's erroneous jury charge that malice could be implied from the use of a deadly weapon. Strickland v. Washington, supra.; Yates v. Evatt, 500 U.S. 391 (1991). **[FAILED TO OBJECT TO IMPLIED MALICE INSTRUCTION].**

9(f). Applicant received ineffective assistance of counsel inasmuch as counsel failed to object to the solicitor's offering expert testimony from Earl Asbell during the guilt phase when this witness had never been qualified in the area of blood splatter. Strickland v. Washington, supra.; McDill v. Mark's Auto Sales, 626 S. E.2d 52 (2006). **[FAILED TO OBJECT TO EXPERT OPINION ON BLOOD SPLATTER BASED UPON FAILURE OF EXPERT TO HAVE BEEN QUALIFIED BEFORE].**

9(g). Applicant was denied due process of law and a fair sentencing determination based on the state's use of "torture" as an aggravator which, as defined under South Carolina law, is unconstitutionally overbroad. U.S. Constitution, Amendment V, VIII, and XIV, the South Carolina Constitution and state and federal law. **[DENIED DUE PROCESS BY OVERBROAD TORTURE AGGRAVATOR].**

III.

Respondents submit that the entire application is without merit. In allegations 9(a) through 9(f), he makes allegations claiming ineffective assistance of counsel. Respondents submit that he has failed to show either deficient performance and/or prejudice under Strickland v Washington, 466 U.S. 668(1984) on each of the claims. Respondents will initially address the general law on ineffective assistance and then address each alleged claim.

A. General Law On Ineffective Assistance of Counsel Standards.

Under the standard for evaluating claims of ineffective assistance of counsel, the Applicant must establish that counsel's representation fell below an objective standard of reasonableness. Strickland v Washington, 466 U.S. 668 (1984). Counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment.” Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of counsel’s performance is whether he fell outside of the range of competence demanded of lawyers practicing criminal law. Butler, supra. The scrutiny of counsel’s acts or omissions must be highly deferential and a reviewing court must make every effort to remove the distorting effects of hindsight. Strickland, 466 U.S. at 689.

Competency is measured against what an objectively reasonable attorney would have done under circumstances existing at the time of the representation. Savino v. Murray, 82 F.3d 593, 598 (4th Cir. 1996). The Court should “decline to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial.” Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996).

As the Supreme Court made clear in Strickland:

... the reasonableness of counsel’s actions may be determined or substantially influenced by the defendant’s own statements or actions. Counsel’s actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigations are reasonable depends upon such information . . . [W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel’s failure to pursue those investigations may not later be challenged as unreasonable.

Strickland, 466 U.S. at 691. Barnes v. Thompson, 58 F.3d 971, 978 (4th Cir. 1995); Matthews v. Evatt, 105 F.3d 907, 919-920 (4th Cir. 1997). Counsel's conduct is generally presumed to be a reasonable strategic choice, but is not reasonable to the extent that the choice of strategy does not rely upon either a full investigation of the law and facts or an abbreviated investigation of the law and facts limited only by "reasonable professional judgments." *Id.* at 690-91, 104 S.Ct. 2052. Trial counsel have a duty to reasonably investigate and present mitigation evidence at sentencing. See Wiggins v. Smith, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003); Williams v. Taylor, 529 U.S. 362, 395-96, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000); Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir.2003). At the same time, however, "Strickland does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant." Wiggins, 539 U.S. at 533, 123 S.Ct. 2527. The mere fact that trial counsel's strategy was unsuccessful does not render counsel's assistance unconstitutionally ineffective. Strickland, 466 U.S. at 689. Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995). In many cases, counsel's decision not to pursue a particular approach at sentencing reflects not incompetence, but rather a sound strategic choice. See Rose v. Lee, 252 F.3d 676, 693 (4th Cir.2001). Accord Bunch v. Thompson, 949 F.2d 1354, 1364 (4th Cir.1991).

In addition to a burden of showing deficient performance, counsel must also prove prejudice under the Sixth Amendment. The standard of prejudice differs depending upon whether it is related to guilt phase issues or penalty phase issues. In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Johnson v. State,

325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.* With respect to the prejudice prong of a sentencing-stage IAC claim, "the question is whether there is a reasonable probability that, absent the errors, the sentencer ... would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695. In *Wiggins v. Smith*, 539 U.S. 510, 534 (2003), the Court further noted that, "[i]n assessing prejudice, we reweigh the evidence in aggravation against the totality of available mitigating evidence." The "totality of the available evidence" includes "both that adduced at trial, and the evidence adduced in the habeas proceeding." *Wiggins*, 539 U.S. at 536 (quoting *Williams*, 529 U.S. at 397-98).

While Petitioner focuses his argument on the reasonableness of trial counsels' performance, it may be unnecessary for this Court to undertake such an analysis because Petitioner has failed to meet his burden under the second prong of *Strickland*, which requires that he "affirmatively prove prejudice." 466 U.S. at 693. As the *Strickland* Court explained, "A court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Id.* at 697 ("if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice ... that course should be followed"); see *Smith v. Robbins*, 528 U.S. 259, 286 n. 4 (2000); *Fields v. Brown*, 431 F.3d 1186, 1203-04 (9th Cir.2005). In *Jones v. State*, 332 S.C. 329, 504 S.E.2d.822 (1998), the South Carolina Supreme Court restated the prejudice prong in a capital sentencing proceeding as being established when "there is a reasonable probability that, absent [counsel's] errors, the sentencer (including an appellate court, to the extent it independently reweighs the

evidence) would have concluded that the balance of aggravating and mitigating circumstances did not warrant death," citing Strickland. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Jones, 504 S.E.2d at 823-824. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. Petitioner must show that a reasonable probability exists that but for the unprofessional error, "at least one juror would have struck a different balance." Wiggins v. Smith, 539 U.S. 510, 537, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). Thus, Petitioner must show by a probability sufficient to undermine confidence in the outcome that the deficient performance "might well have influenced" at least one juror to choose life imprisonment. Id. at 538 (quoting Williams v. Taylor, 529 U.S. at 398). The Supreme Court has specifically rejected the contention that a petitioner must establish "a reasonable probability" by a preponderance of the evidence. Williams v. Taylor, 529 U.S. at 405-06. See also Rose v. Lee, 252 F.3d 676, 689 (4th Cir.2001) (noting same).

Respondents submit that the Applicant will be unable to satisfy this burden.

A. COUNSEL FAILED TO PROFFER PSYCHIATRIC EVIDENCE IN SUPPORT OF MOTION FOR SECOND COMPETENCY HEARING 9(a).

In his first amended allegation, Weik contends that his counsel was ineffective in failing to "proffer" unstated psychiatric testimony and evidence in support of their motion for a second competency to stand trial hearing. The Applicant wholly fails to present, with any specificity either the particular psychiatric testimony that he contends that counsel possessed at the time and should have "proffered" at trial or the author of the testimony. Upon receipt of the amended application, Respondents filed discovery motions seeking to determine, with needed particularity the source of these conclusory claims. At the time of this filing, Applicant's counsel has not yet

responded to the interrogatories or motion to produce. This broad contention fails to state with adequate specificity what the alleged testimony or evidence is that was not "proffered." This failure to present a clear factual basis in the Application, rather than a broad legal conclusion, prevents the Respondent from adequately responding to the allegation. Pursuant to SCRCR, Rule 12(e), Respondents herein move this Court for a more definite statement in a timely manner or to strike the allegation because it is too vague and ambiguous. The Respondents cannot be expected to reasonably respond to the broad claim without a precise statement as to what evidence the Applicant now claims existed at the time of trial that should have been used.

Alternately, Respondents submit that the record of the earlier proceedings defeat his claim by showing that the Strickland prejudice prong cannot be satisfied.

1. Pretrial Competency Hearing - May 18, 1999

The trial judge held a pretrial competency hearing on May 18, 1999. At the hearing, testimony was received from court-appointed examiners, Dr. Pamela Crawford, Dr. Stephen Shea, and Dr. Thomas Behrmann. The Appellant's counsel presented testimony from Dr. William Brannon, Lilly Weik, Dr. Donna Schwartz-Watts, Dr. Donald Morgan, and the Appellant. R. p. 194-436.

a. Dr. Pamela Crawford

Dr. Pamela Crawford, a forensic psychiatrist and Director of Forensics at William S. Hall Institute, testified that she evaluated Weik pursuant to a December 16, 1998 order. She stated that she received numerous materials: the arrest warrants, autopsy, incident report, statements of the Appellant, police case notes, medical records, including a normal MRI, and various lab tests. R. p. 198-199. She also sought to elicit information from the defense counsel. R. p. 199. She

was also aware of two normal neurological consultations. R. p. 201. She stated that she had spent approximately six (6) hours with the Appellant. R. p. 201-202. She determined that he had no prior psychiatric history or history of alcohol or drug abuse. R. p. 201-202. She stated he had left school in the 11th grade and had a history of gainful employment and involvement in the church.

Dr. Crawford described the Appellant's demeanor as "cooperative, pleasant, and appropriate." R. p. 203. She described that in her initial interview with him, he described seeing a "hag" as a vision that occurred just prior to falling asleep or waking up. She described this hypnogogic or hypnopompic hallucination as a very common phenomenon. She also stated that on this date (May 18), he described the fact that he had told the defense expert that he had heard voices in the past when he fell asleep or woke up and when he had been under extreme stress. R. p. 205. He had previously denied hearing voices previously to her. R. p. 205.

Dr. Crawford opined that he had an average IQ and had the ability to understand Miranda warnings. She diagnosed Weik with schizotypal personality disorder, based upon his history of life-long discomfort in social situations, a reduced capacity for relationships, ideas of reference, his over interpretation of phenomena, his odd beliefs about "the hag" as a demon and that the CIA has an interest in his family. R. p. 208. He also has a "constricted effect" because he is very reserved and does not show emotion a great deal of the time and social anxiety. R. p. 208-09.

Dr. Crawford opined that he knows that he is charged in murder and burglary, that he is able to define them and is aware of the penalties, that he knows the duties and responsibilities of the solicitor, defense counsel, and the jury. R. p. 210. He also knows and appreciates the

differences in a guilty plea and not guilty plea, appreciates the fact that the charges are serious. R. p. 210-211.

Dr. Crawford opined that Weik had a factual and rational understanding of the proceedings. R. p. 211, l. 4-11. She also opined that he had the ability to disclose relevant information to his lawyers prior to and during trial, that he would see his lawyers as a resource for legal advice, that she had observed him interacting with his lawyers at this date. R. p. 209-212. She further opined that he trusts his attorneys, had the ability to understand a plea bargain, to follow testimony, and to testify, if he chooses. She opined that he has sufficient present ability to consult with his lawyers in a reasonable degree of rational understanding. R. p. 212, l. 17-20.

Dr. Crawford stated, however, that Weik's desired outcome was to receive the death penalty. R. p. 212-213. She was advised by him that the reasons, which she found to be rational, were that he did not want to spend his life in prison with criminals and if he got out, the people he cared about would no longer be living. R. p. 213. He had also told her that his death would benefit his son with Social Security benefits. R. p. 213. Further, he stated that based upon his religious beliefs that he deserved to die since he had killed someone. R. p. 213.

She opined that Weik's desire to receive the death penalty was not based upon any delusions. She stated that he was able to consider alternatives that could affect his decision, including if his son asked him not to receive the death penalty. R. p. 213-14. She opined that a person could rationally make the choice and that Weik was rationally making this choice.

Dr. Crawford had an opinion that Weik was able to distinguish moral and legal right from wrong at the time of the crime. R. p. 214. She noted that her review of the statements revealed evidence of a depersonalization experience (i.e. like watching himself from a distance), but

found that this would be "expectable" for someone in the act of murdering someone with a shotgun. R. p. 215, 1. 12-20.

As to the potential for GBMI, Dr. Crawford opined that Weik had the ability to conform his conduct to the requirements of law on April 30, 1998. R. p. 215-216.

She opined that Weik did not suffer from depersonalization disorder because he did not experience it on repeated occasions and it did not interfere with his functioning or daily life. R. p. 216-217. She also ruled out paranoid schizophrenia because his ideas of reference did not meet delusional proportions as fixed false beliefs and only occurred when falling asleep or waking up without deterioration in his functioning. R. p. 217. She pointed to the fact that he had been able to maintain a job and on the day of the crime, his boss had considered given him a raise since he was doing well. R. p. 218.

On cross-examination by the defense, Dr. Crawford stated that on the morning of the hearing, Weik stated he was not hallucinating, but had in the past. R. p. 222-223. She described the interview on May 6 when Weik described two to three occasions that he had experienced "the hag" while falling asleep or waking up and described it as a demon who held him down. R. p. 224. She stated that he had also stated he had heard voices prior to the incident that he was a bad person and told him to kill himself. R. p. 225, 227. She noted that he had suicidal thoughts in the past. R. p. 225. She learned that he had not attempted suicide despite his suicidal thoughts expressed in an earlier letter. R. p. 226-227.

Dr. Crawford stated that it could be rational thought for someone to think that it is preferable to die than to spend the rest of his life in prison. R. p. 227.

She stated that Weik also saw his role in jury selection to eliminate people he did not think were appropriate on the jury, like the CIA or Masons. R. p. 228.

Dr. Crawford stated she met with his mother about 15 minutes and also received a full social history. R. p. 229.

She stated that Weik knew the role of his attorneys is to help in his defense and was aware that they did not want him to be sentenced to death. R. p. 229-230. She opined that although the outcome they seek is different from his, that he can assist them. R. p. 230, l. 507.

Dr. Crawford opinion that some rational people hear voices. R. p. 231. She stated that the fact that he described in his statement enjoying murdering someone can be a "rational thought." R. p. 232-233.

b. Dr. Stephen Shea

Dr. Stephen Shea, a forensic psychologist who was the chief psychologist at Hall and an assistant professor at the University of South Carolina Medical School Department of Neuropsychiatry, testified that he gave a series of psychological tests to Weik, interviewed Weik, and received medical reports and numerous documents related to the incident, including the statements of Weik. R. p. 240-41. He opined that Weik was of average intelligence. He concurred with Dr. Crawford on her diagnosis of schizotypal personality disorder and the legal questions. R. p. 242-46. Particularly, he opined that Weik had the ability on April 30, 1998 to determine moral and legal right from moral and legal wrong and did not suffer from a mental illness or defect that would have prevented it. R. p. 242-43 (M' Naughten). Further, he opined that he does not suffer from a mental illness or defect so severe that it would prevent him from conforming his behavior to the requirements of law. R. p. 243 (GBMI). Dr. Shea testified that he had participated in prior interviews of Weik and interviewed him that day. R. p. 243. He opined, like Dr. Crawford, that Weik had a rational and factual understanding of the case and has the ability to consult with his lawyers. R. p. 244.

Dr. Shea testified that the depersonalization experience that Weik described in his statement was not unusual for a person in a traumatic event. R. p. 244-45. Like Dr. Crawford, Dr. Shea stated that he had ruled out "depersonalization disorder" because he didn't show it as a separate clinical entity or a repeated problem, but rather two periods that both occurred during traumatic events. R. p. 245.

Dr. Shea also found that Weik did not show psychosis or a decline in social or occupational functioning to suggest schizophrenia. R. p. 245-56. As to schizotypal personality disorder, Dr. Shea stated that this was not so severe that it wouldn't keep him from perceiving or conforming to reality. R. p. 246. He also opined that Weik was able to understand and assert his Miranda rights. R. p. 246-47.

Dr. Shea stated that Weik during his interviews was clean and had appropriate hygiene. His demeanor varied from initially angry and suspicious when at the hospital to later being very cooperative and anxious. R. p. 248. Dr. Shea stated he had spent 13 to 15 hours with him. He stated that during this hearing, he observed Weik reading from the Bible and not appearing to pay attention which was different than during his interviews. R. p. 249-50.

Dr. Shea testified that Weik's description of "the hag" varied. Weik had initially suggested it was an experience that he had since childhood and happening all the time, then later clarified it had only happened on a few occasions. R. p. 251. Weik explained that it could not tell how many because he attributes his bad dreams to be the hag's work. R. p. 251. Weik estimated between 2 and 10 times. Like Dr. Crawford, Dr. Shea found this experience "not unusual" and possible with people without a mental illness and more common in a schizotypal personality.

On cross-examination, Dr. Shea acknowledged that the number of "hag" experiences decreased when he was questioned more fully about it. R. p. 253. Dr. Shea stated that Weik denied being crazy, but would give bizarre experiences and odd beliefs that he found to be consistent with schizotypal personality. Weik told him that he read the Bible because he has been saved and is a Christian. R. p. 255. He told him that through prayer he can keep the devil or evil spirits away. R. p. 255, 256. Contrary to counsel's assertion, Dr. Shea found that Weik did not read the Bible "constantly", but he always had it with him. R. p. 255. Dr. Shea saw these beliefs as a matter of faith rather than rational proof and that Weik's beliefs are not as far out of the mainstream to be a sign of mental illness. R. p. 256.

Dr. Shea described Weik telling him about an accidental gunshot wound and a bad car accident, but was not sure he had related the car accident to Dr. Behrmann or Dr. Crawford. He testified that he shared "most of his notes" with the forensic team. R. p. 258.

Dr. Shea stated he saw Weik associating with other patients and the chaplain. R. p. 259. Dr. Shea stated that his notes reflected that Weik ate on and off while at the hospital.

c. Dr. Thomas Behrmann

Dr. Thomas Behrmann, former Assistant Director at Hall, also testified that Weik was competent to stand trial. Dr. Behrmann, a forensics psychiatrist, testified that he had seen Weik in 1998 and during March 1999 and on the date of the hearing. R. p. 284-85. He stated his interviews with Weik were consistent and did not show a deterioration of his mental status. R. p. 285-86. Dr. Behrmann concurred in the findings of competency by Dr. Crawford and Dr. Shea. R. p. 286-87. In addition to find him criminally responsible under M'Naughten and able to conform his conduct to the requirements of law (GBM), he opined that Weik was currently

competent to stand trial. R. p. 287-88. He also concurred in the conclusion of schizotypal personality. R. p. 288.

Dr. Behrmann found that while a number of Weik's reports are bizarre, none gives rise to the threshold of being actual delusional beliefs. R. p. 288. Further, many of the beliefs were a culturally specific belief in the idea of a "hag" that is tied to the "root" religion and common in South Carolina. R. p. 288, l. 20 - p. 289, l. 2. Dr. Behrmann described seeing other patients who had described "the hag." R. p. 289.

Dr. Behrmann also found the perceived experience of seeing oneself at a time of stress was common in over 1/3 or 1/2 of the population, including people without mental illnesses. R. p. 289. He admitted that Weik expressed a desire to plead guilty and get the death penalty and stated Weik had not suggested this desire arises from a delusional process, but described consistent logic as to why the punishment is acceptable to him. R. p. 290-91. He described another individual who he had found competent and opted for the death penalty. R. p. 292-93. He concluded that Weik was competent to stand trial on that date. R. p. 293.

On cross-examination, Dr. Behrmann stated that Weik told him that according to his religion if you kill someone else, you deserve to die. R. p. 294-95. He described his March 15, 1999 meeting with Weik when the death penalty was discussed, that he wanted justice to be done, for the court to find out what's correct and for him to receive the death penalty. He said it would not serve any purpose and waste of money for him to stay alive. He told Dr. Behrmann the death penalty would be quicker and a better option. R. p. 296. Dr. Behrmann stated that on that date, Weik was not suffering under any kind of delusional process or fixed false beliefs. R. p. 298-99. He acknowledged that Weik thought that he did not want CIA people on his jury

because he feared they were to harm him or his family, but he said it would be difficult to determine who they were. R. p. 299-300.

Dr. Behrmann found Weik to be anxious today, that Weik does become tangential but is able to come back to the former question. R. p. 300-01. He found that the anxiety of Mr. Weik at the outset of his death penalty trial to not be an unusual or abnormal response of someone in his situation. R. p. 300-01. Further, Dr. Behrmann opined that Weik did not suffer from a major mental illness and his symptoms arising from his personality problem. He stated that although Weik gets anxious and then more disorganized, it does not rise to the level to interfere with his ability to assist. R. p. 303.

Dr. Behrmann denied that Weik was ever psychotic while at Hall and stated the fact that he was offered Haldol merely suggested he was experiencing symptoms. R. p. 305. He stated that very quickly it appeared that he did not require such medication. R. p. 305. Weik advised Dr. Behrmann that he had concerns about being perceived as mentally ill, that he was not crazy and did not need to be at the hospital and thought that he smelled medication in his food and he did not want to take medication. R. p. 307.

On re-direct, Dr. Behrmann stated that Weik was eccentric with odd behavior. R. p. 307-08.

d. Dr. William Brannon

The defense presented initially Dr. William Brannon, an expert in neurology and neuropsychiatry, who performed a neurological exam on the Petitioner on March 15, 1999. R. p. 266. He stated he found Weik agitated and could not keep him focused with tangential thinking. R. p. 267-68. Dr. Brannon found that his neurological tests to be normal. R. p. 268-69. He also determined that his mental status reflected a flight of ideas, inability to concentrate and

tangential. R. p. 269. He discussed with him that he wished to plead guilty and hoped that his examination at Hall the same day would clear the air so he could plead guilty. R. p. 270. He said this was the only person he had ever examined who made that request. R. p. 269. He opined that Weik felt that he was actively prohibited from pleading guilty at the time of his interview. R. p. 270. He opined that Weik had no neurological problem and that his mental illness was more characteristic of a psychiatric illness than a brain dysfunction. R. p. 271. He described him as "crazy" or "abnormal", but acknowledged his consultation was to determine the existence of a neurological disorder. R. p. 271, 274.

e. Lilly Weik

The defense called Weik's mother, Lilly Weik. R. p. 275. She stated she now speaks daily with her son. R. p. 276. She described the fact he wanted to keep to himself when he grew up. She also described an incident where he got hit in the head with a brick bat, but was not taken to the hospital. R. p. 276. He was in two car accidents and in the first he had to wear a neck brace and a second where he was thrown from a truck. R. p. 277. She described problems he had in school in the 70's and his failure to attend church in the 80's because he was an atheist. R. p. 278. She said in 1997, he wanted to be baptized and now believes in God.. She said that the Petitioner knows about what happened to his father in Vietnam who was told that if he talked about it the CIA would kill him so that is why he is afraid of them. R. p. 279-80. She stated that Weik is not his normal self. R. p. 280.

f. Dr. Donna Schwartz-Watts

Dr. Donna Schwartz-Watts, a private psychiatrist, testified that she had seen Weik three times. In March 1999 she visited Weik at the jail and opined that h suffered from a thought disorder. In April 1999, she met with him at the jail for three hours and found a marked change

in his mental state. She stated that he had changed his appearance from bald to have his hair grow back so he could look like the "monster that committed the crime." R. p. 311-12. Also, she found his thinking to be more open than the first interview when he was very tangential and preoccupied with religion. R. p. 313. At the second interview, she opined that she was able to elicit symptoms from him. Weik had described beginning a relationship with a woman when he joined the church, but he began to focus more on the church and his son. Weik felt she may have been sent by devil to tempt him and that he began having hallucinations in December. R. p. 314. Dr. Watts stated that he described one set with "the hag" that says very negative things about him and a second set of voices that comment on his behavior in a negative way. R. p. 314. Dr. Watts stated that it was her opinion that he had worsened. At that time, she was concerned that the events leading to the murder may have been a dissociative or depersonalization disorder and wanted Dr. Donald Morgan to assist her in clarifying it. R. p. 315.

Dr. Watts stated the next time she saw him was today (May 18, 1999). She opined that he was "worse than I've seen him." R. p. 315. She stated that Weik is adamant that he does not have a mental illness and he is open to discussing what he feels is happening to him and she felt decompensating from the stress. She stated that while Dr. Crawford was testifying, Weik indicated to her that he disagreed with some things she said because he had not told her everything because he thinks they want him to be sent away to the hospital.

Dr. Watts opined that Weik has schizophrenia and that the stress of the trial has caused him to be less able to defend against the impulses. R. p. 316. He opined that he had delusional beliefs that the CIA and Masons may have involvement in the trial to make sure that he is killed and that his father is being persecuted by the CIA and they want him to keep quiet so they won't learn of his father's involvement in Vietnam. R. p. 317. After objection, she opined that

schizophrenia was an appropriate diagnosis. She stated that he had prior suicide ideations. He advised her that it was his job "to save people" in jail until he was killed. R. p. 319.

She opined he suffered from the disease at the time of the trial. She stated that he was always cooperative, friendly, and answered questions, but his expression of emotions, like laughter, were inappropriate. R. p. 320. She stated he became tearful and remorseful when he described the deaths. He also described fearing to eat when he was in the hospital for two (2) days because he thought medicine was being put in his food. R. p. 321. She said he put the swastika on his arm after a football injury because he thought it was a dead part of his body and the tattoo would remind him. R. p. 321.

Dr. Watts stated that he described the "hag" attacking him in September 1997. She said this may have coincided when he started working a different shift, had trouble sleeping, and his relationship with a woman. R. p. 322.

She opined that Weik did not have a rational understanding of the proceedings and was not able to assist in his defense. R. p. 322, ll. 17-19.

Upon the court's question, Dr. Watts stated she had two reasons for this opinion. First, the nature that he has been hallucinating at times and stated that he read his Bible and chanted to ward off these hallucinations and had done so throughout the (competency) proceeding. She stated Weik had told her that day he was doing so to ward off demons and hags. R. p. 323-24. Second, she declared Weik had not been forthcoming with his symptoms to some of the evaluations. She noted that while in the jail he had been able to sleep in the day time and stay awake at night. Yet, while at the hospital he was not able to sleep defensive and guarded. R. p. 324. She declared Weik was not malingering although like others with mental illnesses he was refusing medication and denying that he was ill. R. p. 325. Concerning suicidal thinking, it was

her opinion that he would kill himself if he does not get the death penalty. R. p. 325, l. 23 - p. 326, l. 4.

She opined that Weik would be difficult to treat because he has refused medication. She stated that Weik absolutely knew what he was doing when he gave a statement and she thought he was trying to make sure that he would receive the death penalty. R. p. 326. Dr. Watts stated that Weik had informed her about head injuries and a near drowning incident at age 11 where he was unconscious, yet did not receive medical treatment and an incident where a gun misfired and he was shot in the arm and lost consciousness. R. p. 327. She stated that she had met with Dr. Behumann in March 1999. Also, she stated that Weik believed that his lawyers will be there to help him, that he trusts them, and he will help them because he believes their reason for representing him is to help him get the death penalty. R. p. 328.

On cross-examination, Dr. Watts stated that Weik was initially guarded when she saw him, but has now become more open as she sees him. R. p. 329. She declared that he has become sicker and can no longer try to appear normal. R. p. 329. As the trial progresses, she opined that he becomes more anxious and disorganized. He has consistently in the three interviews stated that he murdered someone, that he was wrong, and that he wants the death penalty. R. p. 330. She stated that he is incompetent because he's hallucinating and delusional. She said he is not following the testimony. R. p. 330-31. She stated that this morning Weik was preoccupied with religion and in his responses would allude to the Bible. R. p. 331. She said he told them that reading his Bible was his protection against hearing voices. R. p. 332.

Dr. Watts accepted that Weik had a normal MRI, a normal neurological examination and no prior psychiatric history in clinics, schools, or hospitals. She opined that he had a serious suicide attempt in 1998 on his birthday when he wrote in a letter that he had a loaded gun and

planned to kill himself and had sat in his room with gun and thought about it until his son called. R. p. 334.

She reported that Weik had an intact family with his parents, no developmental or childhood behavioral problems, and an average IQ. R. p. 335-36. He had also maintained employment.

She stated a delusion he held about the CIA and Masons, although she admitted that his parents also feared the CIA. R. p. 337-38. She said he also had a delusion about forcible medication at Hall and about dead parts of his body. R. p. 338. She again spoke of the fact that Weik minimized hallucinations, but that sometimes he presents himself as well and does not want to appear sick. R. p. 340. She declared that if his only symptom of hallucinations were when he fell asleep or woke up that she would not consider him psychotic. R. p. 341. She stated that there was a discrepancy in his reporting to other clinicians. R. p. 343. She pointed out that his delusions before April 1998 involved his dead arm and his family being persecuted by the CIA and Masons. R. p. 345.

Dr. Watts pointed out that there may be medications to help him, but he refuses to take them. R. p. 345. She confirmed that Weik was able to define the charges, knew the duties of the judge, solicitor, and jury. R. p. 346. She stated that he trusts his attorneys, knew their function, knows the difference between a plea of guilty and not guilty, stated he's guilty because he killed his victim, and appreciates the seriousness of the charges. R. p. 347. However, she was unsure that he could control his behavior in court. R. p. 347.

Importantly, Dr. Watts testified that currently he was able to discuss relevant case facts, but also that he was markedly preoccupied with religion. To a degree of medical certainty, he sees his lawyers as a resource to help him get the death penalty and that they care about him. R.

p. 348. Dr. Watts felt that he did not have the ability to follow the testimony because if he is hallucinating "he will be reading his Bible and chanting and chanting to drown out the voices" and fears if he fails to read his Bible or disagree with witnesses or control his behavior, he will be sent to the State Hospital. R. p. 349. She admitted no one had told him he shouldn't be reading his Bible. R. p. 349.

Dr. Watts testified that he had the ability and wanted to testify. She suggested that the structure of testifying would decrease the hallucinations. R. p. 350. However, she admitted that he had denied having hallucinations in court that day. R. p. 350. She said hallucinations may be witnessed by the presence of distracted eyes and bizarre motor movements. R. p. 351. She said that even though he was reading the Bible then, she did not know if he was hallucinating then. R. p. 351.

She said he is psychotic because of hallucinations or delusions and the only way she can tell if he is having delusions is because he reports them consistently. R. p. 352. She says it is common for the mentally ill to "fake well." She admitted that someone can have delusions and hallucinations and still be competent to stand trial. R. p. 353. She stated that Weik would not trust his lawyers if he thought they were trying to get him into a hospital. R. p. 354. She stated that it was in his best interest to have a trial for justice to be done, but felt it should be done when he is not hallucinating.

g. The Appellant, John "Eddie" Weik

Weik testified in the competency hearing that he was 32. He briefly described his family, and the injuries he had as a child. R. p. 356. He stated that they were here to get it over and done with and for the victim and his family. He admitted that he understood what murder was and the punishment for it of death because "you take a life, they get to take your life." R. p. 357.

He stated this came from the Bible in Mosaic law. R. p. 358. He stated he deserved to die because he took a life and it was a waste of taxpayers money to send him to prison at \$25,000 a year to house him. He stated his parents can't rest and he needs to get this over with. R. p. 358.

Weik described the fact that he has dreams. However, he stated they were wrong because "this thing came to me and [he] wasn't asleep." R. p. 359. He stated "the hag" first hit him between September and October. He stated the colored people at work were aware of this. R. p. 359. Masons don't want to have anything to do with him because he is a murderer and their oath and brotherhood won't let them. R. p. 359. He stated "the hag" had him by the neck in his bed, but he could not see it. R. p. 359, l. 22-25. He said he told his family and friends, but no one believed him. The people at work told him it was the "hag" although he did not believe in root doctors or voodoo. R. p. 360. He stated that when it hit him he could not move or breathe and it was "like a dream." R. p. 360. He said he was cold, could not move, or shout for help. Only in the morning was he able to move, and then he heard voices saying "they're watching." R. p. 360. He said no one believed him when he told them about it. R. p. 361. After this occurred, then he started having dreams seeing people or he had psychedelic dreams. R. p. 361-62. He testified he saw the hag one or two times a month. R. p. 363. He said he wasn't able to see his face until after he got to jail. R. p. 363. Then, he saw the face and it was like a pretty woman with curly metallic colored hair and then when he moved his head, it looked like a man, real tall, with a coat like a gown and six digits. R. p. 365. He stated the hag held him down, smiled at him and started laughing.

Weik described, in detail, a fishing trip he had with his son, Daniel, and his cousin, Sam, when he got stuck on a sand bar and saved his son from drowning. R. p. 367-75.

He said he tried to cooperate with the doctors, but he did not want to stay there. He stated that Dr. Behrmann did not act normal and he held back answers. He talked to Dr. Shea but thought Dr. Shea had lied to him. Weik said when he got to the hospital, he thought he could smell medicine in people's food and on their body and breath. R. p. 379. Weik described his prior attempt to commit suicide when he made nooses but it broke, he could not have enough rope, or he could not get his feet off the ground. R. p. 381-82. He talked about when he lost his job, how he lost his job and how he went to his room, started thinking about death and thought about using the shotgun or .22, but his other kept knocking on his door. R. p. 384-85. He said that he tried to tell his son he still had a job. R. p. 386.

On cross-examination, Weik described correctly the role of the solicitor, the charges he had, what murder meant, the job of the judge ("to be neutral, hear the evidence"), the jury ("twelve people of my peers that's supposed to hear the evidence and made a decision"), his lawyers, the difference in a guilty plea and not guilty plea and whether his crimes were serious. R. p. 388. He stated that he could control his behavior in court, and that he had told his lawyers what happened. R. p. 388-90.

Weik stated that he had paid vague attention to the prior testimony of the psychiatrists because it was in the Lord's hands. R. p. 390. He stated that he could listen to the testimony if he wanted to, but he thought this was a waste of taxpayer money. R. p. 392. He said he wanted justice to be done. He said Satan is all around 24 hours a day. R. p. 394. He described the "hag" as being seen by him only 2 times. He denied that the hag was there when Weik asked if he had heard the doctors and gave "no comment." R. p. 395.

h. Dr. Donald Morgan

Dr. Morgan, a forensic psychiatrist, testified that he was referred to Weik by Dr. Schwartz-Watts because of her concerns about the dissociative state. R. p. 398. In interviewing Weik, he stated it was clear to him that he was very ill, delusional, had a paranoid system, and that they should not go forward. R. p. 399. Dr. Morgan stated Weik was delusional about his father who he claimed was dishonorably discharged from the Marines and the CIA had harassed his family since then so his father would not speak of his Viet Nam experience. R. p. 400. However, his father was discharged for psychiatric reasons, so this is one delusion. R. p. 400. Dr. Morgan stated Weik said the ATF harassed them over a gun and they were being tracked by a computer, but the ATF did come to inquire about a gun sale so this showed another "delusion." R. p. 400.

Dr. Morgan confirmed that Weik stated to him that the outcome should be based on Mosaic law and was hyper-religious, but that does not mean delusional. R. p. 401. He opined that Weik had been psychotic two weeks before at a Jackson v. Denno hearing because he later told him he had to chant so that the voices don't bother him. R. p. 401-02.

Dr. Morgan opined that Weik had schizophrenia - paranoid type. R. p. 402. He also suggested he had a disorder of thought even in face to face interviews unless you constantly structure him. R. p. 403. He said he had problems back to 1997 when the hag hit him. R. p. 404. Weik attempts to control the hag by altering normal sleep habits. R. p. 404.

Dr. Morgan opined that Weik could not assist counsel because he was preoccupied with warding off the voices. R. p. 405. He stated he had to read the Bible and chant to ward off the voices and could not assist them at the time. R. p. 405.

Dr. Morgan stated that morning Weik's affect was "totally inappropriate." He stated Weik stated he knew Morgan knew he was praying because his hair stood up, but he did not see

it. R. p. 407. In assessing that Weik was currently not competent, he opined that treatment would require neuroleptics, psychotherapy, and working within his religious set. R. p. 407. Dr.

Morgan said he received information that his father also suffered from schizophrenia. R. p. 412.

On cross-examination, Dr. Morgan conceded that you could have delusional beliefs and still be competent. R. p. 412. He related that the delusions about the CIA and Masons should not be on his jury and became confused when confronted about how he could identify them. R. p. 413. He related that the boat story given to him was the same story defense counsel asked him on direct and repeated the same story almost exactly. R. p. 414-15. (See, R. p. 367-75).

Dr. Morgan stated that the fact that he reads the Bible and chants to keep away the voices is what interferes with his ability to communicate. R. p. 418-19. He admitted that Weik reported in court today that he was not hearing voices. R. p. 419. Dr. Morgan further admitted that Weik had a factual understanding of the proceedings against him. R. p. 421. He also admitted that Weik could disclose relevant facts to his counsel, sees his lawyers as a legal resource, accepts that advice, but would not accept a plea bargain because he sees it as wrong, but understands the concept. R. p. 423. However, Dr. Morgan stated his illness causes him to not think rationally because he is preoccupied with controlling the symptoms so that he is not sent to the hospital. R. p. 424. He admitted that Weik had the ability to testify and give structured answers to questions. R. p. 426.

1. Dr. Crawford on Reply

Dr. Crawford testified that she was present through the testimony. It was her opinion that the preoccupation with warding off auditory hallucinations would not prevent him from working with his lawyers. R. p. 429.

2. May 19 Order Finding Competency to Stand Trial

On May 19, 1999, Judge Shuler opined that Weik was competent to stand trial. R. p. 454-72. The judge initially opined that there was no issue on whether he knew the difference between right and wrong (sanity) and whether or not he had the capacity to conform his conduct to the requirement of law. R. p. 456. On the competency to stand trial question, Judge Shuler stated that Weik has a problem. The Court noted that Weik was reading his Bible with his lips or talking to himself. R. p. 458. The Court noted that during Weik's testimony he was asked by counsel to recount the fishing story and did so for an extensive period which indicated to the court that his thought process was not fragmented and Weik could order his thoughts. R. p. 460. The court also noted from Dr. Schwartz-Watts testimony that when a person is having delusions, he may be seen by third parties. However, the Court found that he had not seen that from Weik who was quietly reading his Bible. R. p. 461. However, he also showed little emotion when his mother cried. R. p. 461. The Court also noted Weik's reliance on comments similar to the Apostle Paul that things were in God's hands. R. p. 462.

The Court noted the burden was on the State to prove Weik competent to stand trial. R. p. 463. The Court concluded that Weik was competent for the following reasons:

1. When Weik testified, upon questioning by the solicitor he revealed he vaguely heard the others testimony, although he had appeared to only be reading. R. p. 464, ll. 17-18.
2. Weik was not disinterested in the proceedings and was aware of what was going on around him. R. p. 464, l. 17 - p. 465, l. 6.
3. Weik declared in his testimony he was not crazy and said he was aware of the things being said about him. R. p. 465, ll. 12-18.
4. Although there was a problem, the Court opined that "I honestly believe that if he wanted to aid in his defense he might do so." R. p. 466, ll. 9-13.
5. The Court noted that during the proceedings, the Petitioner may need a further explanation as to what was going on or said about him. R. p. 466, ll. 14-24.

6. The Court noted that Weik's statement to the police removes any defense, but he has the right to require the state to put up his proof. R. p. 467, ll. 14-19.
7. Even if Weik does not want to aid his defense because he believes he should be tried and sentenced under Mosaic law, he has the right to feel that way. R. p. 468.

Judge Shuler also noted that there was no evidence presented that he was delusional when he gave his statement. R. p. 468-69. The Court noted that Weik had symptoms of both schizotypal personality and schizophrenic, but found there was no evidence that he had problems during his statement which he found freely and voluntarily made. R. p. 469-71.

3. Weik's Guilt Phase Trial Testimony

Weik testified in the guilt phase of his trial. R. p. 1634-1711. He stated he vaguely remembered April 30, 1998, yet described his own actions on that date. R. p. 1634-37. He stated that he spoke to his son on telephone about an earlier school conversation that he had concerning another student picking on him. R. p. 1637-39. He described his conversation with Daniel and particularly that during the conversation he was told he had to go and that they did not want him talking on the phone. R. p. 1639-40. He stated that his mother and John (her fiancé) did not want him talking on the phone with Weik because they are jealous. R. p. 1640. Weik described word for word his recollection of the rest of the telephone conversation. R. p. 1640-41. Fearing that his son would not answer the phone or want to have anything to do with him, Weik then left the house in his truck towards Summerville toward the bank to get money for insurance for his mother and gas money. R. p. 1642. While at the gas station, he decided he needed to see his son. R. p. 1643. He then went to the Krasae residence and describes seeing the family in the yard. He enters the house and apologizes to his son who told him he could not talk. R. p. 1645. His mother then comes in and he described the verbal confrontation. R. p. 1645-46.

He stated that he returned to his truck to start to leave and heard a voice say "kill yourself, you lost everything, you idiot good for nothing" and another state "ten to 20 years, life or death." R. p. 1647. He stated that he stopped and got his shotgun out which was loaded and was in the house. R. p. 1649. He described seeing himself there. R. p. 1649-50. He then described shooting her. R. p. 1650. He said it was like a dream, but one he could not wake up from because he did it. He then describes leaving, smelling gun powder, starting thinking about killing himself, but then heard Susan's father and left. He described leaving and heading toward the police. R. p. 1653. He described in detail being stopped by the police and his actions at that time. R. p. 1654-1666.

Weik stated that when he went to Susan's home, his intent was to apologize to his son. R. p. 1656-57. He denied having ill feelings toward her. R. p. 1657-58.

On cross-examination, Weik responded directly to his questions and stated that he was trying to respond "in the fullest detail." R. p. 1668. He denied telling Mr. Hall that he was going over to Susan's home. R. p. 1671. He again attempted to describe the events in response. R. p. 1675-1706. The Petitioner was asked about the detail of his statement to the police. R. p. 1682-84. He stated that most of his statement was true. R. p. 1684-1706. He stated that in the statement he did not say anything about "the voices" and left out some things. He stated he did not feel anything when he shot her. R. p. 1687. He stated that when he described that he popped another shell in her and that it felt good and that "it felt better" on the next shot was in the statement, but he now claimed he was lying. R. p. 1690-91.

4. The Request for a New (Second) Competency Hearing.

After Weik testified, the defense closed its case. R. p. 1707. The defense advised the court that Weik did not intend to make a personal closing argument and he advised the court that he did not intend to do so. R. p. 1710-11.

A lunch recess was then taken. Counsel for Weik came to the court and advised the court that Weik had some questions about ways of pleading guilty and that the court had advised counsel that if he pleads guilty the judge, not the jury sentences. R. p. 1711-12. At that time, Weik was questioned by the court about the options and expressed a desire to plead guilty and have the judge sentence. R. p. 1715. The court further described the requirement for sentencing and aggravating factors. R. p. 1716. Defense counsel requested to speak to Weik for a few moments after the court's inquiry. The court further discussed the unanimous jury concept for a death sentence and further discussed the burden of proof. R. p. 1718-20.

After another break, counsel Beauford requested an immediate Blair hearing. R. p. 1720. He based this on the assertion that Weik had conveyed some things to them that they felt uncomfortable about. R. p. 1720-21. They described "voices telling him what to do" and things of that nature. R. p. 1720-21.

Judge Shuler denied the request. R. p. 1721-34. Judge Shuler recounted that he had earlier ruled him competent to stand trial and rejected the assertion that he could not aid in his defense because he had to read the Bible and chant and kept hearing voices. R. p. 1721, ll. 19-21. The Court noted that once the trial began, Weik began paying attention to everything that was said and put down his Bible. R. p. 1722.

The Court found after his testimony this date that he was competent to stand trial. R. p. 1722-23. He rejected the assertion from his actual testimony that his thoughts were fragmented or that he could not aid in his defense. R. p. 1723. The trial judge went through his notes of the

testimony and witnesses and commented that Weik was listening and interacting with his counsel as to each one until Mr. Burnett's testimony. R. p. 1723-27. Judge Shuler noted then that Weik became upset, opened his Bible, and began to read. R. p. 1727. Mr. Gamache was called again to testify. R. p. 1728-29. He stated that Weik listened calmly and intently as the testimony was presented from Mr. Van Doran. R. p. 1728-29.

Judge Shuler opined that he must conclude that Weik was competent to stand trial and that he also believed that he was at a point of facing a decision from a jury that he did not want to hear. R. p. 1729. The Court determined that the claim he was saying he was hearing voices now was not enough to stop the trial. R. p. 1730. **The Court noted that the defense psychiatrists were wrong when they declared Weik could not follow the testimony or aid in his defense.** R. p. 1730, ll. 13-18. Further, it was obvious that Weik could testify and has aided his defense throughout the trial. The Court, in context, opined that if Weik was hearing voices at this point it was understandable in his situation. R. p. 1731. He then denied the request for the Blair hearing.

5. The South Carolina Supreme Court Decision

In its opinion, the South Carolina Court addressed the issues in the following manner:

1. Competency

The week before appellant's trial commenced the judge conducted a *Blair* hearing to determine appellant's competency to stand trial. Both the State's experts and appellant's experts agreed that appellant suffers from a mental disorder, [FN2] and that he was not a malingerer. They disagreed, however, whether appellant's condition rendered him incompetent to stand trial.

The test for determining competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him. *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960); *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998). Competency is required to ensure that [the defendant] has the capacity to understand the proceedings and to assist counsel. *Godinez v. Moran*, 509 U.S. 389, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993). The defendant bears the

burden of proving his lack of competence by a preponderance of the evidence, and the trial judge's ruling will be upheld on appeal if supported by the evidence and not against its preponderance. *State v. Reed, supra*.

The trial judge determined appellant was competent to stand trial based on the opinions of the State's experts, and on his own observations of appellant. We find no error. *See e.g. State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998); *State v. Bell*, 293 S.C. 391, 360 S.E.2d 706 (1987).

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3. *Second Competency Hearing*

After the defense rested in the guilt phase of trial, court adjourned for lunch. When court resumed after lunch, the trial judge announced that appellant and the attorneys had met in his office because appellant wished to discuss (again) his desire to plead guilty. The judge then questioned appellant in open court whether he wished to plead, and whether appellant understood that, if he did enter a guilty plea, his right to be sentenced by the jury would cease and the trial judge alone would decide the sentence. Following this discussion, the trial judge ordered a recess so that appellant could consult with his attorneys.

When court resumed, appellant's attorneys asked the judge to have appellant reexamined for competency. They explained that appellant was talking about the voices telling him what to do, and they questioned his ability to assist them, and his competency to choose between continuing with the jury trial or entering a plea. The judge denied their request, and explained his decision at great length and in precise detail. The trial judge had observed appellant throughout the guilt phase proceedings. He found that appellant's conduct was consistent throughout the proceedings, and that appellant had not decompensated in the manner that his experts had predicted. Accordingly, the trial judge concluded that appellant remained competent.

Whether to order a competency examination rests in the trial judge's discretion, and his decision will not be overturned on appeal absent a clear showing of an abuse of that discretion. *State v. Locklair*, 341 S.C. 352, 535 S.E.2d 420 (2000); *see also* S.C. Code Ann. § 44-23-410 (2002) (Whenever a judge of the Circuit Court ... has reason to believe that a person ... is not fit to stand trial ... the judge shall [order an examination] ...). Appellant has not shown a clear abuse of discretion. We defer to the trial judge, who was able to view appellant's demeanor. *See State v. Kelly, supra; State v. Bell, supra*.

State v. Weik, supra., at 4, 6, 7.

In his prior arguments before the S.C. Supreme Court and United States Supreme Court, Weik contended that the South Carolina Supreme Court misapplied the precedent of this Court in *Pate v. Robinson*, 383 U.S. 375 (1966) and *Drope v. Missouri*, 420 U.S. 162 (1975) in rejecting

his assertion that a further competency hearing was necessary. He contended that there was sufficient evidence to suggest that he was incompetent to stand trial during the trial. The trial judge, who had held an extensive pretrial hearing that determined Weik was competent to stand trial, R. p. 194-472, was advised that Weik wanted to enter a guilty plea 1.) after the Petitioner had testified, 2.) after the defense had rested its case in the guilt phase and 3.) after the Petitioner had waived his right to make a personal closing argument, and 4.) after a lunch break. R. p. 1711-1720. After some initial questioning by the trial court, there was a recess. Upon returning from the recess, counsel for the Petitioner requested a Blair hearing because they felt uncomfortable about talking to him and Weik assisting them, they stated that Weik was talking about "voices telling him what to do. . ." R. p. 1720-21. Judge Shuler ruled, based upon the entire record of the earlier Blair hearing and the Weik's trial testimony and participation in the trial, that he would deny the request for a Blair hearing at that point in the trial. R. p. 1721-1734. The South Carolina Supreme Court upheld the discretion of the trial court who determined that Weik was currently competent based upon his own observations of his interaction and trial testimony of the Petitioner immediately prior to the request. Respondents submit that the trial judge did not abuse his discretion in denying the request.

The Due Process Clause of the Fourteenth Amendment prohibits states from trying and convicting mentally incompetent defendants. Pate v. Robinson, 383 U.S. 375, 384-86, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966). The test for determining competency is whether a defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding ... and whether he has a rational as well as a factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960). Competency claims can raise issues of both procedural and substantive due process.

For example, a defendant may make a procedural competency claim by alleging that the trial court failed to hold a competency hearing after the defendant's mental competency was put in issue. To prevail, the defendant must establish that the trial court ignored facts raising a "bona fide doubt" regarding the defendant's competency to stand trial. Pate, 383 U.S. at 384-86, 86 S.Ct. 836. Even if a defendant is mentally competent at the beginning of the trial, the trial court must continually be alert for changes which would suggest that he is no longer competent. Drope v. Missouri, 420 U.S. 162, 180, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975). Although there are "no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed," proof "of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant." *Id.*

On the other hand, a defendant may make a substantive competency claim by alleging that he was, in fact, tried and convicted while mentally incompetent. Pate, 383 U.S. at 384-86, 86 S.Ct. 836; Dusky, 362 U.S. at 402, 80 S.Ct. 788. In contrast to a procedural competency claim, however, a defendant raising a substantive claim of incompetency is entitled to no presumption of incompetency and must demonstrate his incompetency by a preponderance of the evidence. Burket v. Angelone, 208 F.3d 172 at 192 (4th Cir. 2000). "Not every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges." *Id.* (quoting United States ex rel. Foster v. DeRobertis, 741 F.2d 1007, 1012 (7th Cir.1984)). Similarly, "neither low intelligence, mental deficiency, nor bizarre, volatile, and irrational behavior can be equated with mental incompetence to stand trial." Burket, 208 F.3d at 192.

According to S.C. Code § 44-23-410, state trial judges have the inherent authority to order a competency examination if there is reason to believe that a person charged with a

criminal offense is not fit to stand trial. State v. Locklair, 341 S.C. 352, 353, 535 S.E.2d 420, 426 (2000). In Locklair, the Supreme Court recognized that despite the mandatory language of the statute requiring the judge to order a competency examination if there is reason to believe that a person is not fit to stand trial, ordering a competency examination is within the discretion of the trial judge and a refusal to grant an examination will not be disturbed on appeal absent a clear showing of abuse of discretion. Locklair, supra; State v. Singleton, 322 S.C. 480, 472 S.E.2d 640 (Ct. App. 1996).

The defendant bears the burden of proving his incompetence by a preponderance of the evidence. State v. Nance, 320 S.C. 501, 466 S.E.2d 349 (1996). Importantly, the test is not whether the criminal defendant is actually cooperating with his lawyer, but rather if he has the mental capacity to do so. State v. Reed, supra; State v. Bell, 293 S.C. 391, 360 S.E.2d 706 (1987). Accord Adams v. Aiken, 965 F.2d 1306 (4th Cir.1992), Bell v. Evatt, 72 F.3d 421 (4th Cir.1995).

In State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998), the state court recognized that a criminal defendant must be competent throughout the trial, not just at its commencement, citing Drope v. Missouri, 420 U.S. 162 (1975). The Kelly court noted that the court's determination of competency will be upheld if it has evidentiary support and is not against the preponderance of the evidence. In upholding the trial judge's determination of competency, the Court recognized that the trial judge considered the expert testimony, how own observations of the Petitioner in court, and the Appellant's testimony. See 22A C.J.S. Criminal Law § 554 (1989) (trial judge is sole judge of the credibility of witnesses and the weight to be given their testimony, and he is also entitled to evaluate the conflicting testimony.) The Court found evidentiary support for his conclusion of competency, despite the existence of conflicting evidence.

In the amended application, the applicant refers to State v. Burgess, supra., an opinion from the South Carolina Court of Appeals in support of their position. In State v. Burgess, 356 S.C. 572, 590 S.E.2d 42 (2003), the Court of Appeals found that factors to be considered in determining whether further inquiry into a defendant's fitness to stand trial is warranted includes evidence of his irrational behavior, his demeanor at trial, and any prior medical opinion on his competence to stand trial. In some instances the presence of just one of the factors may justify further inquiry into competence to stand trial. However, in Burgess, the Court found, strikingly similar to the instant situation, that her demeanor during the trial was very appropriate, at the hearing she understood the proceedings, the roles of the various participants, and charges leveled against her. "Beyond counsel's statements regarding his inability to talk intelligently with Burgess and his opinion that she could not assist in her defense, counsel offered nothing to demonstrate that Burgess' mental retardation was such as to render her unfit for trial." Burgess, 356 S.C. at 576, 590 S.E.2d at 44. In addition, the Court of Appeals noted that the trial judge did not experience any difficulty in conversing with Burgess and her testimony at the Jackson v. Denno hearing "seems to undercut any question of her competency." Id. at n.7, n.8. Compare, Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004)(error in failing to request evaluation for competency when psychiatric testimony revealed IQ of 60, history of learning disability, frontal lobe damage from an auto accident, and "quick, nonsensical answers to questions").

After carefully reviewing the record, the Court should harbor no doubt that Weik was competent to stand trial where there was no "bona fide doubt" of his present competency. The Petitioner contends that the court at the close of the guilt phase should have held another Blair hearing based upon this request by counsel Beauford. Weik, in his appellate court briefs,

recounted the defense version of the competency hearing, albeit rejected earlier by Judge Shuler, and the fact that Weik had stated he was hearing voices.

It is clear that a "reasonable probability" standard for prejudice has not been met. Judge Shuler utilized his discretion in determining not to re-open the competency situation to new mental health evaluation immediately prior to closing arguments or the entry of a plea. The record provides overwhelming support for this determination. First, the fact that Weik described hearing voices was handled by the court during the earlier competency hearing on May 18-19, 1999. The Court was made aware, in an earlier adversarial setting at the competency hearing of the two divergent views on whether this factor of "hearing voices" prevented Weik from being incompetent to stand trial. Further, the trial court cogently took notes throughout the proceeding studying Weik's demeanor and interaction with counsel during the various witnesses testimony and the Court. R. 1721-1729. Importantly, Weik's actual guilt phase testimony presented immediately before represented both a factual and rational understanding of the proceedings to support the finding of competency, despite his belief that his actions under Mosaic law required death.

The issue of pleading guilty after his guilt phase testimony, but prior to the jury verdict presented trial counsel with the situation of the inquiry of Weik and his comments to them about "voices telling him what to do." R. p. 1720-21. Respondents agree that the trial court had a continuing responsibility to ensure Weik was competent to stand trial throughout the proceedings. The trial judge's cautious and attentive consideration of this issue is revealed by

the court's noted attention, witness by witness, to the Petitioner's interaction during the trial. R. 1721-31.¹

As noted in State v. Bell, supra, the question was not whether a defendant agrees to follow the advice of counsel, but whether he had the mental capacity to do so. Like the judge in Kelly, Judge Shuler considered the expert testimony, the Appellant's testimony, and his observation of him in court. The trial court did not abuse his discretion in referring to hold another Blair hearing on the basis of this record.

The Petitioner seeks to ignore the record in its entirety and merely rely upon a statement by defense counsel who expressed a concern about whether his client at the conclusion of the guilt phase wanted to waive his right to a jury trial and plead guilty. Counsel had asserted that voices were telling him what to do, yet when the trial court made inquiry of the Petitioner, he declared that he did not know if he wanted to plead guilty and the court then allowed, as he should, for the trial to proceed. R. 1734.

The problem with the Petitioner's present position is that he assumes, in a vacuum, that there was a judicial doubt as to the competence of the Weik at the conclusion of the guilt phase. As the trial court recognized, this was not the case. Contrary to the Petitioner's position, the trial court did not merely reject the assertion because he had found him competent at the pre-trial hearing, he contemporaneously assessed the information that had developed during the trial, including the interaction at trial, the demeanor and the testimony which immediately preceded that request by counsel which went only to whether he should plead guilty at that point. R. 1721-1736.

¹Dr. Crawford, Dr. Behrmann, and Dr. Shea had earlier opined that he was competent to stand trial, despite his "hearing voices" in opposition to the conclusions of Dr. Watts and Dr. Morgan.

The trial court found as a fact that Weik was able to follow testimony and aid in his defense as established by his own testimony. R. 1730. **Importantly, this contemporary assessment undermined the credibility of the Petitioner's experts who had previously testified that based upon his mental illness he would be incapable of doing this. R. 1730.**

The Petitioner fails to recognize in his pleadings that the trial court did more than deny a request for a new competency hearing - he assessed his earlier determination in light of the actual circumstances of the trial proceedings. It cannot be seriously disputed that when the Petitioner testified at trial he was fully competent as a matter of law. He was able to have a rational and factual understanding of the proceedings and had the mental capacity to rationally communicate with the court, the jury and counsel. The trial court and the Supreme Court reasonably applied the precedent of the United States Supreme Court where there was no bona fide doubt of his competency.

Respondents submit that the rejection of the psychiatric opinions of the defense experts by the trial court previously can let no doubt, much less, any reasonable probability that had counsel "proffered" the unstated expert psychiatric testimony, albeit previously rejected by the trial judge, that he would have found Weik incompetent to stand trial. He will not meet his burden of proof.

B. COUNSEL'S ALLEGED FAILURE TO OFFER A GUILTY BUT MENTALLY ILL (GBMI) DEFENSE 9(b)

In his second allegation, he contends that trial counsel was ineffective in failing to offer as a defense, a verdict possibility of guilty but mentally ill. Respondents submit that

counsel was neither deficient nor did his performance create Strickland prejudice on this issue. The trial record defeats this claim.

Weik, through counsel, had initially given notice of an insanity defense that was withdrawn. R. p. 472. The defense advised the judge of an intent to enter a plea of guilty but mentally ill. R. p. 515, 1. 7-8. After jury selection was initially begun, the trial court made inquiry of Weik concerning the entry of the plea. R. p. 551-55. The court rejected the entry of the plea finding that he was not admitting to the element of the crime of malice. R. p. 553, 555.

THE COURT: Well, let me ask you this, sir: Are you telling me that you want to plead guilty to the charge of murder?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand what murder is?

THE DEFENDANT: Taking somebody's life, right, sir?

THE COURT: Well, it's not just taking somebody's life. It's killing somebody with malice. In other words, that you had some evil or some malice in your mind or some bad feelings --

THE DEFENDANT: No, sir.

THE COURT: Some bad feeling ahead of time.

THE DEFENDANT: No, sir.

THE COURT: No, sir, what?

THE DEFENDANT: No, sir. I didn't have any malice, sir.

THE COURT: Didn't have any malice. Well, then you aren't guilty of murder. So if you are guilty of murder, then you can't be guilty of murder. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I'm not going to let you plead guilty. If you say that you aren't guilty of having any malice, bad feelings, bad intent and so forth in your mind, then you can't be guilty of the crime of murder.

THE DEFENDANT: I still look her life.

THE COURT: Sir?

THE DEFENDANT: I still took her life.

THE COURT: I understand that. But taking someone's life does not mean that you are guilty of murder.

THE DEFENDANT: She's got to have her avenger, she can't go unavenged.

THE COURT: I'm sorry, tell me what he said.

MR. BEAUFORD: He said she can't go unavenged.

THE COURT: Unavenged, I understand. Well, that being the case, I mean, I don't think there's any question that I have to leave the plea. I mean, it's just that he's indicated from the start that he wanted to plead guilty, he said he was guilty but he always said I took a life so I should have to give a life, I mean that's been his position, you know, throughout last week and so forth.

MR. BEAUFORD: Yes, Your Honor.

THE COURT: And saying that -- I mean, saying is one thing, but understanding what murder actually is, the definition of murder is something else. And if he understands the definition of murder and says that he did not have malice, then obviously under the law he's not guilty of murder and I wouldn't

entertain a guilty plea, so that's just where I'm stuck, I think.

All right. Let's bring juror number one out.

R. 552, l. 20 - 555, l. 9.

In State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992), the Supreme Court found that a criminal defendant who enters a plea of "guilty but mentally ill" under § 17-24-20(A), - 70, was properly sentenced to death by a judge after the entry of the plea. In § 17-24-20(D), the court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in § 17-24-20(A). Respondents submit that the pre-trial attempt to enter the plea failed in a number of respects.

First, the trial court found that the entry of the GBMI plea to murder was in error because Weik refused to admit that he committed the act "with malice [aforethought]. R. p. 551-55. The Appellant contends this was error because either 1.) a plea of GBMI is not a plea of guilty; and 2.) implies that questions of "guilt" are not at issue.

A plea of guilty but mentally ill, just as a plea of guilty, must be freely and voluntarily entered. Although an admission of guilt is not a constitutional or state law requirement, North Carolina v. Alford, 400 U.S. 25 (1970); Gaines v. State, 335 S.C. 376, 517 S.E.2d 439 (1999), the potential plea judge does have the discretion to reject a plea if he believes it is entered without full knowledge of the nature of the offense. See, Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995) (Alford--GBMI plea). State v. Ray, 310 S.C. 431, 427 S.E.2d 171 (1993) (Alford plea may be basis for death sentence).

A guilty plea acts as a formal admission of all the elements of the crime. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999) (plea court failed to ask for an admission of guilt). Since a plea acts as an admission of the elements of a crime, it cannot be error to refuse to accept a guilty plea when the Appellant refuses to admit to the elements of a crime and the plea is not being entered pursuant to Alford. Respondents submit that the trial judge did not err in refusing this submission.

Further, the Appellant contends that he, prior to that time, had satisfied a showing of the fact under § 17-24-20(A), that while mentally ill he "lacked sufficient capacity to conform his conduct to the requirements of law." Contrary to his bare assertion, he had not made that showing in the earlier proceeding. The court-appointed Hall Institute doctors had opined that he had capacity to conform his conduct to the requirements of law. R. p. 215-16, 243, 287-88. The judge at the earlier competency proceeding made a similar conclusion from the matters presented. R. p. 456. The Applicant apparently misapplies this statute. Contrary to the assertion, he did not already satisfy this burden.

Weik was not deprived of showing to the jury in the guilt phase that he was GBMI when the judge refused to accept the entry of a guilty plea of guilty but mentally ill. His assertion to the contrary must be denied. Compare, State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (error to allow jury sentencing after entry of guilty plea). State v. Allen, 261 S.C. 448, 200 S.E.2d 684 (1973) (plea is an admission of guilt of all the elements of the crime.)

In rejecting the similar claim, the South Carolina Supreme Court stated:

2. Plea

[6] During the arraignment in the jury's presence, the trial judge asked whether appellant was pleading guilty or not guilty. Appellant's attorneys were permitted to approach, and an off-the-

record bench conference was held. One of appellant's attorneys then stated, Your honor, [appellant] intends to plead guilty, but mentally ill.

The jury venire was qualified, and the potential jurors divided into panels. Before individual *voir dire* began, there was a colloquy between the trial judge and appellant. During this session, appellant told the judge he wanted to plead guilty to murder. When the judge defined the elements of murder, appellant denied he had acted with malice, and the judge declined to accept the guilty plea.

After the jury had been selected, and before opening statements, the judge informed the jury that appellant's attorney had 'misspoken' during the arraignment when he said appellant was pleading GBMI, and that in fact appellant was pleading 'not guilty.'

On appeal, appellant contends the trial judge committed reversible error in refusing to accept the plea, and in telling the jury that appellant's plea had changed from GBMI to not guilty. While appellant now contends he was attempting to enter a GBMI plea, the record reflects the trial judge believed it was intended to be a guilty plea. No attempt was made during this proceeding to comply with the statutory requirement for a GBMI plea. [FN3] In addition, there was no objection to the judge's refusal to accept the plea nor to the judge's informing the jury that appellant was pleading 'not guilty' rather than GBMI. Since there were no objections made at trial, there is nothing preserved for this Court's appellate review. *E.g., State v. Huggins*, 336 S.C. 200, 519 S.E.2d 574 (1999) (it is well settled that issues cannot be raised for the first time on appeal).

In his assertion, he asserts that the trial counsel erred in failing to present a "defense" of guilty but mentally ill, which is essentially a request that the trial judge to instruct the jury on the alternative verdict of "guilty but mentally ill." The Applicant earlier based his request on the fact that Weik had tendered a GBMI plea and that during his guilt phase testimony, he declared he had heard voices¹ and that he could not get out of the house. R. p. 1649-1650. Respondent

¹

By his trial admission, the voices told him to kill himself, not his son's mother.

submits there was no Sixth Amendment error in the failure to pursue or request an instruction on GBMI.

As stated above, a person is guilty but mentally ill if, at the time of the commission of the crime, he had the capacity to distinguish right from wrong, but because of mental disease or defect, he lacked sufficient capacity to conform his conduct to the requirements of law. § 17-24-20, State v. Wilson, *supra*.

It is hornbook law that the law to be charged to a jury is determined by the evidence presented at trial. State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993). In State v. Campen, 321 S.C. 505, 469 S.E.2d 619 (S.C. App. 1996), the Court of Appeals held that the defendant was entitled to a GBMI instruction where the defendants own testimony and the history of mental illness raised an issue of sanity where the psychiatrist and defendant testified about a long history of mental illness and treatment. Respondents further recognize that lay testimony may be used to establish or defeat issues of mental sanity. State v. Rimert, 315 S.C. 527, 446 S.E.2d 400 (1995). Importantly, the failure to request or object to the failure to instruct waives any alleged error. Singletary v. State, 281 S.C. 444, 316 S.E.2d 369 (1984). Further, no instruction should be given by the trial judge, at the request of the defendant, which tenders an issue not supported or presented by the evidence. State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (S.C. App. 1996).

There was no objection to the instructions as given to request this instruction. R. p. 1781, 1785. Further, the record reveals that the defense did not request this verdict after the defense case had rested prior to the charge except for a manslaughter charge. R. p. 1736-37. In the direct appeal, the Applicant asserted that the trial judge failed to sua sponte instruct on this issue. In denying relief, the Supreme Court stated:

4. Jury Instructions

[9] Appellant next contends the trial judge erred when he failed to submit GBMI as a possible form of verdict in the guilt phase. Whether this was an error is not properly before the Court in this direct appeal since appellant neither requested the charge nor called its omission to the attention of the trial judge. *State v. Hicks*, 330 S.C. 207, 499 S.E.2d 209 (1998) (contemporaneous objection to omission of charge required to preserve issue even in capital case).

However, as noted below, the record which was before the jury, not the trial judge, did not support such a request because there was no showing before the jury either that he suffered from a major mental illness or that due to that illness he lacked sufficient capacity to confirm his conduct to the requirements of the law.

Respondents incorporate by reference the summary set out above on competency to stand trial which bootstraps into the mental illness claim. However, certain salient factors reveal that this "GBMI factor" was not present at the commission of the crime.

A. The Trial (and Competency Hearing) Record

1. Pretrial Competency Hearing - May 18, 1999

The trial judge held a pretrial competency hearing on May 18, 1999. At the hearing, testimony was received from court-appointed examiners, Dr. Pamela Crawford, Dr. Stephen Shea, and Dr. Thomas Behrmann. The Appellant's counsel presented testimony from Dr. William Brannon, Lilly Weik, Dr. Donna Schwartz-Watts, Dr. Donald Morgan, and the Appellant. R. p. 194-436.

a. Dr. Pamela Crawford

Dr. Crawford opined that he had an average IQ and had the ability to understand Miranda warnings. She diagnosed Weik with schizotypal personality disorder, based upon his history of life-long discomfort in social situations, a reduced capacity for relationships, ideas of reference,

his over interpretation of phenomena, his odd beliefs about "the hag" as a demon and that the CIA has an interest in his family. R. p. 208. He also has a "constricted effect" because he is very reserved and does not show emotion a great deal of the time and social anxiety. R. p. 208-09.

Dr. Crawford stated, however, that Weik's desired outcome was to receive the death penalty. R. p. 212-213. She was advised by him that the reasons, which she found to be rational, were that he did not want to spend his life in prison with criminals and if he got out, the people he cared about would no longer be living. R. p. 213. He had also told her that his death would benefit his son with Social Security benefits. R. p. 213. Further, he stated that based upon his religious beliefs that he deserved to die since he had killed someone. R. p. 213.

She opined that Weik's desire to receive the death penalty was not based upon any delusions. She stated that he was able to consider alternatives that could affect his decision, including if his son asked him not to receive the death penalty. R. p. 213-14. She opined that a person could rationally make the choice and that Weik was rationally making this choice.

Dr. Crawford had an opinion that Weik was able to distinguish moral and legal right from wrong at the time of the crime. R. p. 214. She noted that her review of the statements revealed evidence of a depersonalization experience (i.e. like watching himself from a distance), but found that this would be "expectable" for someone in the act of murdering someone with a shotgun. R. p. 215, l. 12-20.

As to the potential for GBMI, Dr. Crawford opined that Weik had the ability to conform his conduct to the requirements of law on April 30, 1998. R. p. 215-216.

She opined that Weik did not suffer from depersonalization disorder because he did not experience it on repeated occasions and it did not interfere with his functioning or daily life. R. p. 216-217. She also ruled out paranoid schizophrenia because his ideas of reference did not

meet delusional proportions as fixed false beliefs and only occurred when falling asleep or waking up without deterioration in his functioning. R. p. 217. She pointed to the fact that he had been able to maintain a job and on the day of the crime, his boss had considered given him a raise since he was doing well. R. p. 218.

Dr. Crawford stated she met with his mother about 15 minutes and also received a full social history. R. p. 229.

Dr. Crawford opinion that some rational people hear voices. R. p. 231. She stated that the fact that he described in his statement enjoying murdering someone can be a "rational thought." R. p. 232-233.

b. Dr. Stephen Shea

Dr. Stephen Shea, a forensic psychologist who was the chief psychologist at Hall and an assistant professor at the University of South Carolina Medical School Department of Neuropsychiatry, concurred with Dr. Crawford on her diagnosis of schizotypal personality disorder and the legal questions. R. p. 242-46. Particularly, he opined that Weik had the ability on April 30, 1998 to determine moral and legal right from moral and legal wrong and did not suffer from a mental illness or defect that would have prevented it. R. p. 242-43 (M' Naughten). Further, he opined that he does not suffer from a mental illness or defect so severe that it would prevent him from conforming his behavior to the requirements of law. R. p. 243 (GBMI). See also, R. 2063 (penalty phase testimony which rejects the existence of GBMI since he did not have a mental disease or defect that would have prevented him from conforming his conduct to the requirements of law).

Dr. Shea testified that the depersonalization experience that Weik described in his statement was not unusual for a person in a traumatic event. R. p. 244-45. Like Dr. Crawford,

Dr. Shea stated that he had ruled out "depersonalization disorder" because he didn't show it as a separate clinical entity or a repeated problem, but rather two periods that both occurred during traumatic events. R. p. 245.

Dr. Shea also found that Weik did not show psychosis or a decline in social or occupational functioning to suggest schizophrenia. R. p. 245-56. As to schizotypal personality disorder, Dr. Shea stated that this was not so severe that it wouldn't keep him from perceiving or conforming to reality. R. p. 246. He also opined that Weik was able to understand and assert his Miranda rights. R. p. 246-47.

Dr. Shea testified that Weik's description of "the hag" varied. Weik had initially suggested it was an experience that he had since childhood and happening all the time, then later clarified it had only happened on a few occasions. R. p. 251. Weik explained that it could not tell how many because he attributes his bad dreams to be the hag's work. R. p. 251. Weik estimated between 2 and 10 times. Like Dr. Crawford, Dr. Shea found this experience "not unusual" and possible with people without a mental illness and more common in a schizotypal personality.

On cross-examination, Dr. Shea acknowledged that the number of "hag" experiences decreased when he was questioned more fully about it. R. p. 253. Dr. Shea stated that Weik denied being crazy, but would give bizarre experiences and odd beliefs that he found to be consistent with schizotypal personality. Weik told him that he read the Bible because he has been saved and is a Christian. R. p. 255. He told him that through prayer he can keep the devil or evil spirits away. R. p. 255, 256. Contrary to counsel's assertion, Dr. Shea found that Weik did not read the Bible "constantly", but he always had it with him. R. p. 255. Dr. Shea saw these

beliefs as a matter of faith rather than rational proof and that Weik's beliefs are not as far out of the mainstream to be a sign of mental illness. R. p. 256.

c. Dr. Thomas Behrmann

Dr. Thomas Behrmann, former Assistant Director at Hall, testified and opined that his mental status was **criminally responsible under M'Naughten and able to conform his conduct to the requirements of law (not GBMI)**. R. p. 287-88. He also concurred in the conclusion of schizotypal personality. R. p. 288.

Dr. Behrmann found that while a number of Weik's reports are bizarre, none gives rise to the threshold of being actual delusional beliefs. R. p. 288. Further, many of the beliefs were a culturally specific belief in the idea of a "hag" that is tied to the "root" religion and common in South Carolina. R. p. 288, l. 20 - p. 289, l. 2. Dr. Behrmann described seeing other patients who had described "the hag." R. p. 289.

Dr. Behrmann also found the perceived experience of seeing oneself at a time of stress was common in over 1/3 or 1/2 of the population, including people without mental illnesses. R. p. 289. Further, Dr. Behrmann opined that Weik did not suffer from a major mental illness and his symptoms arising from his personality problem. He stated that although Weik gets anxious and then more disorganized, it does not rise to the level to interfere with his ability to assist. R. p. 303.

Dr. Behrmann denied that Weik was ever psychotic while at Hall and stated the fact that he was offered Haldol merely suggested he was experiencing symptoms. R. p. 305. He stated that very quickly it appeared that he did not require such medication. R. p. 305. Weik advised Dr. Behrmann that he had concerns about being perceived as mentally ill, that he was not crazy

and did not need to be at the hospital and thought that he smelled medication in his food and he did not want to take medication. R. p. 307.

On re-direct, Dr. Behrmann stated that Weik was eccentric with odd behavior. R. p. 307-08.

d. Dr. William Brannon

The defense presented initially Dr. William Brannon, an expert in neurology and neuropsychiatry, who performed a neurological exam on the Appellant on March 15, 1999. R. p. 266. Dr. Brannon found that his neurological tests to be normal. R. p. 268-69. He also determined that his mental status reflected a flight of ideas, inability to concentrate and tangential. R. p. 269. He opined that Weik had no neurological problem and that his mental illness was more characteristic of a psychiatric illness than a brain dysfunction. R. p. 271. He described him as "crazy" or "abnormal", but acknowledged his consultation was to determine the existence of a neurological disorder. R. p. 271, 274.

e. Lilly Weik

The defense called Weik's mother, Lilly Weik. R. p. 275. She stated that Weik is not his normal self. R. p. 280.

f. Dr. Donna Schwartz-Watts

Dr. Donna Schwartz-Watts, a private psychiatrist, testified that she had seen Weik three times. In March 1999 she visited Weik at the jail and opined that h suffered from a thought disorder. In April 1999, she met with him at the jail for three hours and found a marked change in his mental state. At that time, she was concerned that the events leading to the murder may have been a dissociative or depersonalization disorder and wanted Dr. Donald Morgan to assist her in clarifying it. R. p. 315. Dr. Watts opined that Weik has schizophrenia and that the stress

of the trial has caused him to be less able to defend against the impulses. R. p. 316. He opined that he had delusional beliefs that the CIA and Masons may have involvement in the trial to make sure that he is killed and that his father is being persecuted by the CIA and they want him to keep quiet so they won't learn of his father's involvement in Vietnam. R. p. 317. After objection, she opined that schizophrenia was an appropriate diagnosis. She stated that he had prior suicide ideations. He advised her that it was his job "to save people" in jail until he was killed. R. p. 319.

She opined he suffered from the disease at the time of the trial. She stated that he was always cooperative, friendly, and answered questions, but his expression of emotions, like laughter, were inappropriate. R. p. 317-320. She stated he became tearful and remorseful when he described the deaths. He also described fearing to eat when he was in the hospital for two (2) days because he thought medicine was being put in his food. R. p. 321. She said he put the swastika on his arm after a football injury because he thought it was a dead part of his body and the tattoo would remind him. R. p. 321.

Dr. Watts stated that he described the "hag" attacking him in September 1997. She said this may have coincided when he started working a different shift, had trouble sleeping, and his relationship with a woman. R. p. 322.

She stated that Weik absolutely knew what he was doing when he gave a statement and she thought he was trying to make sure that he would receive the death penalty. R. p. 326.

Dr. Watts accepted that Weik had a normal MRI, a normal neurological examination and no prior psychiatric history in clinics, schools, or hospitals. She opined that he had a serious suicide attempt in 1998 on his birthday when he wrote in a letter that he had a loaded gun and

planned to kill himself and had sat in his room with gun and thought about it until his son called.

R. p. 334.

She reported that Weik had an intact family with his parents, no developmental or childhood behavioral problems, and an average IQ. R. p. 335-36. He had also maintained employment.

g. The Appellant, John "Eddie" Weik

Weik testified in the competency hearing that he was 32. He briefly described his family, and the injuries he had as a child. R. p. 356. He stated that they were here to get it over and done with and for the victim and his family. He admitted that he understood what murder was and the punishment for it of death because "you take a life, they get to take your life." R. p. 357. He stated this came from the Bible in Mosaic law. R. p. 358. He stated he deserved to die because he took a life and it was a waste of taxpayers money to send him to prison at \$25,000 a year to house him. He stated his parents can't rest and he needs to get this over with. R. p. 358.

Weik described the fact that he has dreams. However, he stated they were wrong because "this thing came to me and [he] wasn't asleep." R. p. 359. He stated "the hag" first hit him between September and October. He stated the colored people at work were aware of this. R. p. 359. Masons don't want to have anything to do with him because he is a murderer and their oath and brotherhood won't let them. R. p. 359. He stated "the hag" had him by the neck in his bed, but he could not see it. R. p. 359, l. 22-25. He said he told his family and friends, but no one believed him. The people at work told him it was the "hag" although he did not believe in root doctors or voodoo. R. p. 360. He stated that when it hit him he could not move or breathe and it was "like a dream." R. p. 360. He said he was cold, could not move, or shout for help. Only in the morning was he able to move, and then he heard voices saying "they're watching." R. p. 360.

He said no one believed him when he told them about it. R. p. 361. After this occurred, then he started having dreams seeing people or he had psychedelic dreams. R. p. 361-62. He testified he saw the hag one or two times a month. R. p. 363. He said he wasn't able to see his face until after he got to jail. R. p. 363. Then, he saw the face and it was like a pretty woman with curly metallic colored hair and then when he moved his head, it looked like a man, real tall, with a coat like a gown and six digits. R. p. 365. He stated the hag held him down, smiled at him and started laughing.

Weik described, in detail, a fishing trip he had with his son, Daniel, and his cousin, Sam, when he got stuck on a sand bar and saved his son from drowning. R. p. 367-75.

He said he tried to cooperate with the doctors, but he did not want to stay there. He stated that Dr. Behrmann did not act normal and he held back answers. He talked to Dr. Shea but thought Dr. Shea had lied to him. Weik said when he got to the hospital, he thought he could smell medicine in people's food and on their body and breath. R. p. 379. Weik described his prior attempt to commit suicide when he made nooses but it broke, he could not have enough rope, or he could not get his feet off the ground. R. p. 381-82. He talked about when he lost his job, how he lost his job and how he went to his room, started thinking about death and thought about using the shotgun or .22, but his other kept knocking on his door. R. p. 384-85. He said that he tried to tell his son he still had a job. R. p. 386.

On cross-examination, Weik described correctly the role of the solicitor, the charges he had, what murder meant, the job of the judge ("to be neutral, hear the evidence"), the jury ("twelve people of my peers that's supposed to hear the evidence and made a decision"), his lawyers, the difference in a guilty plea and not guilty plea and whether his crimes were serious.

R. p. 388. He stated that he could control his behavior in court, and that he had told his lawyers what happened. R. p. 388-90.

Weik stated that he had paid vague attention to the prior testimony of the psychiatrists because it was in the Lord's hands. R. p. 390. He stated that he could listen to the testimony if he wanted to, but he thought this was a waste of taxpayer money. R. p. 392. He said he wanted justice to be done. He said Satan is all around 24 hours a day. R. p. 394. He described the "hag" as being seen by him only 2 times. He denied that the hag was there when Weik asked if he had heard the doctors and gave "no comment." R. p. 395.

h. Dr. Donald Morgan

Dr. Morgan, a forensic psychiatrist, testified that he was referred to Weik by Dr. Schwartz-Watts because of her concerns about the dissociative state. R. p. 398. In interviewing Weik, he stated it was clear to him that he was very ill, delusional, had a paranoid system, and that they should not go forward. R. p. 399. Dr. Morgan stated Weik was delusional about his father who he claimed was dishonorably discharged from the Marines and the CIA had harassed his family since then so his father would not speak of his Viet Nam experience. R. p. 400. However, his father was discharged for psychiatric reasons, so this is one delusion. R. p. 400. Dr. Morgan stated Weik said the ATF harassed them over a gun and they were being tracked by a computer, but the ATF did come to inquire about a gun sale so this showed another "delusion." R. p. 400.

Dr. Morgan confirmed that Weik stated to him that the outcome should be based on Mosaic law and was hyper-religious, but that does not mean delusional. R. p. 401. He opined that Weik had been psychotic two weeks before at a Jackson v. Denno hearing because he later told him he had to chant so that the voices don't bother him. R. p. 401-02.

Dr. Morgan opined that Weik had schizophrenia - paranoid type. R. p. 402. He also suggested he had a disorder of thought even in face to face interviews unless you constantly structure him. R. p. 403. He said he had problems back to 1997 when the hag hit him. R. p. 404. Weik attempts to control the hag by altering normal sleep habits. R. p. 404.

3. Weik's Guilt Phase Trial Testimony in front of the jury.

Weik testified in the guilt phase of his trial. R. p. 1634-1711. He stated he vaguely remembered April 30, 1998, yet described his own actions on that date. R. p. 1634-37. He stated that he spoke to his son on telephone about an earlier school conversation that he had concerning another student picking on him. R. p. 1637-39. He described his conversation with Daniel and particularly that during the conversation he was told he had to go and that they did not want him talking on the phone. R. p. 1639-40. He stated that his mother and John (her fiancé) did not want him talking on the phone with Weik because they are jealous. R. p. 1640. Weik described word for word his recollection of the rest of the telephone conversation. R. p. 1640-41. Fearing that his son would not answer the phone or want to have anything to do with him, Weik then left the house in his truck towards Summerville toward the bank to get money for insurance for his mother and gas money. R. p. 1642. While at the gas station, he decided he needed to see his son. R. p. 1643. He then went to the Krasae residence and describes seeing the family in the yard. He enters the house and apologizes to his son who told him he could not talk. R. p. 1645. His mother then comes in and he described the verbal confrontation. R. p. 1645-46. He stated that he returned to his truck to start to leave and heard a voice say "kill yourself, you lost everything, you idiot good for nothing" and another state "ten to 20 years, life or death." R. p. 1647. He stated that he stopped and got his shotgun out which was loaded and was in the house. R. p. 1649. He described seeing himself there. R. p. 1649-50. He then described

shooting her. R. p. 1650. He said it was like a dream, but one he could not wake up from because he did it. He then describes leaving, smelling gun powder, starting thinking about killing himself, but then heard Susan's father and left. He described leaving and heading toward the police. R. p. 1653. He described in detail being stopped by the police and his actions at that time. R. p. 1654-1666.

Weik stated that when he went to Susan's home, his intent was to apologize to his son. R. p. 1656-57. He denied having ill feelings toward her. R. p. 1657-58.

On cross-examination, Weik responded directly to his questions and stated that he was trying to respond "in the fullest detail." R. p. 1668. He denied telling Mr. Hall that he was going over to Susan's home. R. p. 1671. He again attempted to describe the events in response. R. p. 1675-1706. The Appellant was asked about the detail of his statement to the police. R. p. 1682-84. He stated that most of his statement was true. R. p. 1684-1706. He stated that in the statement he did not say anything about "the voices" and left out some things. He stated he did not feel anything when he shot her. R. p. 1687. He stated that when he described that he popped another shell in her and that it felt good and that "it felt better" on the next shot was in the statement, but he now claimed he was lying. R. p. 1690-91.

Further, the issue of whether he suffered from a mental illness or lacked sufficient capacity to conform his conduct was not presented to the jury by the evidence in the case. There is no evidence that the Appellant has pointed to in the State's case that suggested either a mental illness or his action arising from an irresistible impulse. To the contrary, the State's evidence revealed Weik's intent pre-existed by the comments to Hall, the securing of a loaded weapon to the car, the verbal agreement. Then destruction of his son's mother by four shotgun blast, each

causing him to feel better. Unlike Campen, there was no history of any mental illness presented to the jury.

The Applicant's apparent reliance upon the voices and that he could not get back out of the house did not evidence GBMI to require an instruction on GBMI. It is obvious that the voices did not tell him to murder his wife and he does not make that claim. To the contrary, he claims they told him to kill himself, an act that he was able to resist. Further, his claim that he could not get out of the house does not equate with GBMI by lacking substantial capacity to conform his conduct to the requirements of law. He has failed to show any entitlement to this instruction.

Nevertheless, absent any specificity that any witnesses would assert GBMI existed at the time of the crime, that the bare allegation raises a question of fact which is conclusively refuted by the record based upon the testimony of Weik. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983). His allegation to the contrary must be dismissed.

B. COUNSEL'S ALLEGED FAILURE TO OFFER BACKGROUND EVIDENCE TO THE DEFENSE EXPERTS. 9(c).

In his third specification of ineffective assistance, Weik claims that his counsel failed to provide "background evidence" to defense experts. During the guilt phase. Testimony in front of the jury was presented by Abraham Rodriguez (a co-worker at Broyhill who testified about his relationship with Weik and Weik's relationship with his son), Lilly Weik and the Applicant. R.

1589-1706. In particular, Lilly Weik testified about her children, the relationship Weik had with Susan, her description of Weik prior to his son's birth, his relationship with his son leading up to April 30, 1998, and his demeanor shortly before the incident. As stated above, Eddie testified in the guilt phase about his background. In the penalty phase, testimony from the defense was

received from Amy- Weik-Going, Dr. Augustus Rogers, an expert in social work, Dr. Geoffrey McKee, a forensic psychologist, Dr. Donna Schwartz-Watts, Dr. Donald Morgan, and Dr. Stephen Shea. Dr. Pamela Crawford testified for the state in reply. In each of these witnesses, additional evidence of Weik's character and background was presented.

Dr. Rogers, an expert in social work, testified about his social history investigation. R. 1930-1941. In addition to receiving records from the investigator Scott Parker, he stated he personally interviewed several members of the family and Weik. R. 1939, 1941-1942. Dr. McKee described his mental assessment of Weik. R. p. 1958-1966. He testified that he had seen the social history and reviewed Dr. Crawford's report and had a verbal consultation with Dr. Shea, but had not seen all the Hall Institute records. R. 1966-67.

Dr. Schwartz testified about her interviews of Weik with Dr. Finkenbine. She stated that in giving her opinion, it was based upon his history and records. R. 1995. She declared that she had been present during some of the testimony of other experts, had reviewed the records of Hall Institute, the incident reports, the warrants, all the statements, the videotape after the arrest and transcripts of those tapes. R. p. 2001. She opined that Weik knows right from wrong. R. 2007. She did not see Weik testify in court in the guilt phase, but had spoken with his attorneys and Dr. Crawford about his testimony. R. 2011. Dr. Watts also stated that she had spoken with Weik's brother and detention officers at the jail. R. 2013.

Dr. Morgan met with Weik prior to his opinion read portions of reports, but did not go through either of the hospitalization records from Hall Institute in the kind of detail he wished. R. 2027. However, he admitted that he had access to the Carlos Torres social history from Hall Institute (7 pages) at both the Blair hearing and prior to his testimony, although he had not read it in the detail that he should have. R. 2040-41. Dr. Morgan stated that he had two interviews with

Weik, including one with Dr. Behrmann, Dr. Shea, Dr. Schwartz-Watts and in interviews with his lawyers. R. 2042.

Dr. Shea testified that he had spent possible 13 hours with Weik. R. 2053.

Dr. Crawford declared that she had reviewed the incident reports, the warrants, the audiotape, transcripts of statements, psychological testing, the MRI neurological testing, the social history provided by the social worker, spoken with Weik's attorneys and mother, and observed him in court in addition to her own interviews o him. R. 2073-2075.

In his allegation, he fails to set out what particular "readily available background information" he failed to provide to the defense experts. As stated above, significant information was made available to the experts prior to their testimony. Upon receipt of the amended application, Respondents filed discovery motions seeking to determine, with needed particularity the source of these conclusory claims. At the time of this filing, Applicant's counsel has not yet responded to the interrogatories or motion to produce. This broad contention fails to state with adequate specificity what the alleged background evidence was that was not provided to defense experts, where the record reveals "background information" and social histories were provided to defense experts. This failure to present a clear factual basis in the Application, rather than a broad legal conclusion, prevents the Respondent from adequately responding to the allegation. Pursuant to SCRCF, Rule 12(e), Respondents herein move this Court for a more definite ~~statement in a timely manner or to strike the allegation because it is too vague and~~ ambiguous. The Respondents cannot be expected to reasonably respond to the broad claim without a precise statement as to what evidence the Applicant now claims existed at the time of trial that should have been used.

D. COUNSEL'S ALLEGED FAILURE TO OFFER BACKGROUND EVIDENCE TO THE DEFENSE EXPERTS. 9(d).

In his fourth allegation he makes a similar claim concerning an alleged failure to provide the state's expert's with readily available background testimony. Respondents incorporate by reference the brief summary set out concerning allegation 9(c). As in 9(c) , he fails to state with any particularity what background evidence, in like of the testimony which contradicts the general allegations, was not provided and how it was readily available. As stated above, significant information was made available to the experts prior to their testimony. Upon receipt of the amended application, Respondents filed discovery motions seeking to determine, with needed particularity the source of these conclusory claims. At the time of this filing, Applicant's counsel has not yet responded to the interrogatories or motion to produce. This broad contention fails to state with adequate specificity what the alleged background evidence was that was not provided to defense experts, where the record reveals "background information" and social histories were provided to defense experts. This failure to present a clear factual basis in the Application, rather than a broad legal conclusion, prevents the Respondent from adequately responding to the allegation. Pursuant to SCRCF, Rule 12(e), Respondents herein move this Court for a more definite statement in a timely manner or to strike the allegation because it is too vague and ambiguous. The Respondents cannot be expected to reasonably respond to the broad claim without a precise statement as to what evidence the Applicant now claims existed at the time of trial that should have been used by state experts or that counsel was deficient in failing to reveal to state experts.

E. COUNSEL'S FAILURE TO OBJECT TO IMPLIED MALICE CHARGE THAT MALICE COULD BE INFERRED FROM THE USE OF A DEADLY WEAPON. 9(e).

In his allegation, he contends that trial counsel was deficient in the failure in the guilt phase to object to the alleged "implied malice" charge. A review of the trial record reveals that the trial judge denied the request for a manslaughter instruction, which the trial court denied. R. 1736-37. During the instructions, the trial judge defined the elements of murder, including malice aforethought. R. 1770-1775.2 No objection was made to the instructions at the conclusion of the charge. R. 1783, ll. 5-7. The jury began deliberations at 3:35 PM and returned with a verdict at 3:46 PM. R. 1784-85.

During the trial, Judge Shuler gave the following pertinent instructions on murder and malice:

And so I'm going to give you the elements in regards to murder, the definition of murder, and then talk to you a few minutes about it.

Murder is the unlawful killing of any person with malice aforethought, expressed or implied. That's the definition of murder in South Carolina. It's the unlawful killing of another human being with malice aforethought, either expressed or implied.

The State must prove, of course, that on or about the 30th day of April, I believe the indictment says, 1998, that's the first thing; in Dorchester County, that's the second thing; that a human being, that's the third thing; was killed, the fourth thing; with malice aforethought. Malice aforethought. And that malice aforethought must either be expressed or implied.

2 During the state's closing argument, Solicitor Bailey described the fact that the record "reeks of malice" and that "as part of the instructions, Judge Shuler is going to tell you that you can infer malice from the intentional use of a deadly weapon, and that's exactly what the facts in this case shows, the intentional use of a deadly weapon four times against a helpless woman in her own home who was unarmed, offered no threat to her..." R. 1743, l. 3-10. Solicitor Bailey subsequently set out further incantations of the term malice as "the meaning of ill will, hatred or hostility toward another person...a general malignant recklessness of the lives and safety of others or condition of the mind that shows a heart regardless of social duty and fatally bent on mischief." R. 1748.

Defense counsel Beauford, in his guilt phase closing stated that he felt the case was weakest as to malice. : "Yes, you may infer malice from the use of a gun, but that does not make it malice. You may use that inn making your determination. . . Was there that evil mind, evil intent, that hatred, that depraved heart..." 1755.

What is malice? What is malice? Let me tell you that malice is defined in the law of homicide as a term of art, that is a technical term importing wickedness and excluding just cause or excuse. It's something that springs from wickedness, from depravity, from a depraved spirit, from a heart devoid of social duty and fatally bent on mischief.

In the popular sense the term malice conveys the meaning of hatred or ill will or hostility toward another person. But in its legal sense it is employed in the description - - as it is employed in the description of murder it does not necessarily import ill will toward an individual, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of mind which shows a heart regardless of social duty and fatally bent on mischief.

In other words, a malicious killing is one where the act is done without legal justification, excuse, or extenuation. And malice has been frequently substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse.

Now, that is the term of, and definition of, malice. That malice must be aforethought. What does aforethought mean? Aforethought simply means the malice must be in the mind of that person, the maliciousness must be in the mind of that person or heart of that person at some time, at least some time before the act of murder occurs. It may be weeks, it may be months, it could be seconds, it could be a second. It has to be in the mind, present in the mind on the part of that person at least some time before the fatal act is achieved.

And I said that murder is the unlawful killing of a human being with malice aforethought expressed or implied. What is expressed malice? By the way, malice can be expressed or implied. It doesn't mean that there are two different kinds of malice, but simply the manner in which that malice is shown.

Expressed malice may be - - malice may be expressed as where previous threats of vengeance or lying in wait or other circumstances show directly an intent to kill was in the mind of the defendant. Where someone, for example, speaks, expresses openly or does some act, expresses an act openly, like in vengeance, that kind of thing is an example of expressed malice.

But malice may also be implied or inferred. Malice may be implied through the use of a deadly weapon. A deadly weapon is defined as any article or instrument used to inflict serious bodily injury or death. Malice may be inferred from the use of a deadly weapon. Malice may be inferred from the intent to kill. Malice may be inferred from the use of a deadly weapon. Malice may be inferred from the intent to kill. Malice may be inferred from an intent to do serious bodily harm. Malice may be inferred or implied from the willful, deliberate, and intentional doing of an unlawful act without just case or excuse, or from the use of a deadly weapon.

The resulting implication only permits, rather than requires a jury, to infer malice. This permissive inference is an evidentiary fact to be taken into consideration by you, ladies and gentleman, along with all of the evidence in the case, and you should give it such weight as you feel it deserves.

The law says that malice may be inferred from evidence of such recklessness and wantonness that it indicates a depravity of a defendant's mind and his or her conscious disregard of human life. If the State proves facts beyond a reasonable doubt that raise any inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be taken into consideration by you, ladies and gentlemen, along with all the evidence in the case, and you may give such inference of malice the degree which you determine it should receive. You are free to accept or reject this permissive inference depending upon your view of the evidence in the case.

R. p. 1770-1775. (emphasis added).

Murder is the killing of any person with malice aforethought, either express or implied.

S.C.Code Ann. 16-3-10 (2003). In a murder prosecution, malice may be implied if the defendant uses a deadly weapon. State v. Kelsey, 331 S.C. 50, 63, 502 S.E.2d 63, 69 (1998). The use of a deadly weapon gives rise to a permissive inference of malice. State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998); State v. Von Dohlen, 322 S.C. 234, 248, 471 S.E.2d 689, 697 (1996);

State v. Mattison, 276 S.C. 235, 238, 277 S.E.2d 598, 600 (1981). The jury may draw an inference of malice from proof of the use of a deadly weapon if it concludes such is proper after considering all of the facts and circumstances in evidence. Mattison, 276 S.C. at 239, 277 S.E.2d at 600. In a charge to the jury, the judge should make clear to the jury that it is free to accept or reject the permissive inferences depending on its view of the evidence. State v. Peterson, 287 S.C. 244, 247, 335 S.E.2d 800, 802 (1985), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see State v. Pilgrim, 320 S.C. 409, 415 n. 3, 465 S.E.2d 108, 112 n. 3 (Ct.App.1995) ("While the evidence in this case may give rise to an inference the attack was committed with malice and intent to kill, the inference is a permissive one which the jury is free to accept or reject."), overruled on other grounds by State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996). The supreme court has enunciated a proper jury charge:

The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

State v. Elmore, 279 S.C. 417, 421, 308 S.E.2d 781, 784 (1983). The court cautioned the Bench that only slight deviations from the given charge would be acceptable. *Id.*

When a trial judge's charges that malice is presumed from the use of a deadly weapon, it is an unconstitutional burden shifting instructions. See Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979). When presumption of malice charges were erroneous charges to which counsel did not object on the ground that they constituted unconstitutional burden shifting instructions, counsel's performance was deficient. Taylor v. State, 312 S.C. 179, 439

S.E.2d 820 (1993) (counsel was deficient in failing to object to a jury charge which shifted the burden of proof to the defendant).³

As implicitly recognized by defense counsel as reflected in his own closing argument, when reading the trial judge's charge in its entirety, it is clear that the judge was, in reality, attempting to define the concept of "implied malice" as distinguished from the concept of "presumed malice." Considering the charge as a whole, it must be concluded that reasonable jurors would not have understood the charge as creating a presumption of malice. See State v. Bell, 305 S.C. 11, 406 S.E.2d 165 (1991), cert. denied 502 U.S. 1038, 112 S.Ct. 888, 116 L.Ed.2d 791 (1992). Compare, Tate v. State, 351 S.C. 418, 570 S.E.2d 522 (2002)(instruction on presumption of malice burden shifting).⁴

In Bell, the defendant complained the trial judge improperly defined malice as "the doing of a wrongful act intentionally and without just cause or excuse." We stated "[t]he trial judge's definition of malice is correct ... and the charge given is devoid of any presumption. Moreover, the trial judge clearly instructed the jury it was the State's burden to prove malice." 305 S.C. at 19, 406 S.E.2d at 170.

Here, the trial court thoroughly charged the jury that the burden of proving malice was on the State, and repeatedly emphasized the permissive inference of malice. Moreover, at no time does the charge use the word "presumption." The charge as a whole was sufficient. See

³ There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In order to prove that counsel was ineffective, the applicant must show that counsel's performance was deficient and that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. Strickland v. Washington, supra; Rhodes v. State, 349 S.C. 25, 561 S.E.2d 606 (2002). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id.

⁴ State v. Portee, 122 S.C. 298, 115 S.E. 238 (1922) (charge on malice implied from use of a deadly weapon was not a charge on the facts because charge indicated it was for jury to decide whether a deadly weapon had in fact been used).

State v. Patrick, 289 S.C. 301, 345 S.E.2d 481 (1986), overruled on other grounds, Casey v. State, 305 S.C. 445, 409 S.E.2d 391 (1991). Accord, Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2006) (instruction on implied malice not error).

Since the instruction was not error and consistent with South Carolina law, State v. Elmore, reasonable counsel would not have objected. Therefore, Weik will be unable to satisfy the deficient performance prong.

Further, 6th Amendment prejudice cannot be proven under Strickland, even if we presume that counsel was deficient. An unconstitutional burden shifting instruction is not reversible error if the error was harmless beyond a reasonable doubt. Rose v. Clark, 478 U.S. 570, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986); Plyler v. State, 309 S.C. 408, 424 S.E.2d 477 (1992). The Court must determine whether there is a reasonable likelihood that the jury applied the instruction in a way that violates the Constitution. Boyde v. California, 494 U.S. 370, 110 S.Ct. 1190, 108 L.Ed.2d 316 (1990); State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000), cert. denied, 532 U.S. 1027, 121 S.Ct. 1974, 149 L.Ed.2d 766 (2001). An erroneous malice instruction is harmless if, based on all of the evidence presented to the jury, it did not contribute to the verdict. Plyler v. State, supra. In making this determination, the Court must review the evidence the jury considered in reaching its verdict and weigh the probative force of the evidence against the probative force of the presumption standing alone. Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992), cert. denied, 507 U.S. 927, 113 S.Ct. 1302, 122 L.Ed.2d 691 (1993); Gilbert v. Moore, 134 F.3d 642, 652 (4th Cir.1998) (en banc)

Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Johnson, 291 S.C. 127, 352 S.E.2d 480 (1987). Here, there is evidence that Weik committed a legally

unprovoked attack with multiple shootings upon a defenseless victim.⁵ Simply put the evidence is overwhelming that when he went into the trailer with a loaded shotgun he planned to get the

⁵ In his third specification in his original application, he claimed that counsel erred in failing to offer evidence of manslaughter. The reasoning why that claim is devoid of merit supports the fact that the "implied malice" claim is similarly lacking. The record reveals that at the conclusion of the guilt phase, counsel Beauford moved for a manslaughter instruction, which the trial judge denied. R. p. 1736-37. He now relied upon the penalty phase testimony of the decedent's daughter, Amber Krasae, to assert that there was evidence of manslaughter available, but not used.

Amber Krasae testified in the penalty phase that she was 8 years old and attended Knightsville Elementary School in the second grade. R.p. 1835. After general qualification, she testified that she was home after school with her brother Daniel watching T.V. R. 1838. She saw her mother go over to her grandfather's home next door. The Applicant then came to her home when she was outside with her brother. He had been driving a truck. She testified that her mother came over from next door and "they started pushing each other" on the porch of the trailer. R. 1839-40. Then she said she went inside with Daniel. She stated her mother then came into the house and shut the screen door and she overheard her mother state: "If you don't leave, I'm going to call the police." R. 1841. She stated the Applicant then went to the back of the truck and got a gun. R.p. 1841. "I saw Eddie get a gun, he came to the house and he threw open the screen door. And then I was about to go to Daniel's room and Daniel was right in front of me so I ran to the bathroom..." with Daniel because there was no where else to run. R.p. 1842-43. She tried to shut the door, but could not since there was a shoe hanger on the door. She stated: "I saw him shoot her" more than once and call her a "motherfucker." R.p. 1843-44. Weik then left and they ran outside and a woman from across the street came over and called the police. R.p. 1844-45. The defense asked no questions of this witness. R.p. 1845.

In his pleadings, he contends that this was evidence of manslaughter that should have been presented in the guilt phase to support an instruction on manslaughter. In his statement to the police, Weik stated that he exchanged words with the victim on the porch. Statement, p. 11. In the guilt phase, Weik testified that he went to the Krasae residence and describes seeing the family in the yard. He enters the house and apologizes to his son who told him he could not talk. R. p. 1645. His mother then comes in and he described the verbal

confrontation. R. p. 1645-46. He stated that he returned to his truck to start to leave and heard a voice say "kill yourself, you lost everything, you idiot good for nothing" and another state "ten to 20 years, life or death." R. p. 1647. He stated that he stopped and got his shotgun out which was loaded and was in the house. R. p. 1649. He described seeing himself there. R. p. 1649-50. He then described shooting her. R. p. 1650. He said it was like a dream, but one he could not wake up from because he did it. He then describes leaving, smelling gun powder, starting thinking about killing himself, but then heard Susan's father and left. He described leaving and heading toward the police. R. p. 1653. He described in detail being stopped by the police and his actions at that time. R. p. 1654-1666.

Weik testifies: "...she didn't touch me, but she's shaking the finger in my face, you know, calling me these words and stuff like that." R.p. 1646, ll. 8-10. However, she stated that she cursed him while he was there. R.p. 1675.

Where death is caused by use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation. *Id.* at 104, 64 S.E.2d at 134. Rather, when death is caused by the use of a deadly weapon, the opprobrious words must be accompanied by the appearance of an assault--by some overt, threatening act--which could have produced the heat of passion. *State v. Lowry*, 315 S.C. 396, 434 S.E.2d 272 (1993) (citing *State v. Judge*, 208 S.C. 497, 38 S.E.2d 715 (1946)). Manslaughter is defined as "the unlawful killing of another without malice." S.C.Code Ann. § 16-3-50 (Supp.2000); *Carter v. State*, 301 S.C. 396, 398, 392 S.E.2d 184, 185 (1990). Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing. The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence. *State v. Cole*, at 101-02, 525 S.E.2d at 513 (internal citations omitted). Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter. *State v. Hughey*,

victim and did so with malice aforethought. Like the harmless error situations in *Arnold*, *Roberts*, *Gilbert* and *Gleaton*, there is harmless error beyond a reasonable doubt on the face of this record — malice is uncontestable. Therefore, Weik cannot show any reasonable probability that had counsel objected to the malice instruction, the result of the proceeding would have been different. There is a simple reason why the jury deliberated for such a short period of time — the evidence of guilt was irrefutable. He failed in his burden of proof to show either deficient performance or prejudice under Strickland.

F. COUNSEL'S FAILURE TO OBJECT TO THE QUALIFICATION OF EARL ASBELL ON THE QUESTION OF BLOOD SPLATTER. 9(f).

In his final allegation directly related to counsel effectiveness, he claims that counsel should have objected to the qualification of Earl Asbell to give an opinion on blood splatter because "he had never been qualified in the area of blood splatter. Weik cites McDill v. Mark's Auto Sales in support of this assertion. The record reveals that in the guilt phase of the trial that Sergeant Earl Asbell of the Dorchester County Sheriff's Department, an 11 year employee, in charge of crime scene, latent print examiner and evidence custodian testified that he had been trained beyond basic academy training at IPTM training in Florida⁶ for crime scene technician workshop and "homicide investigations", "basic blood splatter" and "advanced blood splatter." R. 1464. During his unobjected testimony, Sgt. Asbell was asked, among other matters, to describe the general scene around the body of the victim when he saw it:

339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000); State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951) (citing State v. Davis, 50 S.C. 405, 27 S.E. 905 (1897)).

⁶ "IPTM" stands for the Institute of Police Technology and Management at the University of North Florida. See www.iptm.org.

- A. There was a volume of blood underneath the body with blood spatter.
- Q. Tell the jury what blood spatter is?
- A. When you have a pool of blood and something strikes it, the surface tension of the blood is erupted, it creates a spatter. Kind of like if you go along and you step in a mud puddle, the spattering the water out. When an object strikes a pool of blood it creates the same type of spatter. You have spatter from something striking the blood, you have spatter from something being cast off. When your hands wet, you're shaking, you know, water goes everywhere, that spatter. That's what we call blood spatter. She had a volume of blood directly under the body, you have spatter coming up from between her legs towards the floor going under the table and then directed up on the walls behind her body.

ROA. 1470, ll. 4-21. No objection was made during this testimony.

During the penalty phase. Sgt. Asbell testifies again. ROA 1846-1860. In that testimony, he was again asked to describe blood spatter evidence:

Answer: Well, for example with a gunshot wound, when you have a gunshot wound to the body as the projectile passes through the body, the force of the energy expels blood out the exit wound and creates what we call spatter on the wall.

Also, if there's a pool of blood, an object strikes that blood, the surface tension of the blood is disrupted and it causes a spatter. I believe I gave you an example of that. If you step into a puddle of water you notice how the water splashes to the side, this is what we call splash when something lands into a pool of blood and causes a low velocity spatter.

Question: ... Now you have some training in blood spatter testimony?

Answer: Yes, sir.

Question: Excuse me, blood spatter evidence, not testimony.

...

ANSWER: I went to school in IPTM in 1992.

.... Judy Bunker and Associates were there Wednesday and Thursday and they introduced me to blood spatter at that time. In 1994 I went to Metro Dade in Miami, Florida and took a blood spatter workshop. In 1997 I went to the Advanced Blood Stain Pattern Analysis School also in Metro Dade. And that was the three schoolings I had in blood spatter.

ROA, p. 1849-1850. Solicitor Bailey then offered Sgt. Asbell as an "expert in blood spatter." R. 1850, l. 21.

Counsel Beauford then voir dired Asbell. In his examination Sgt. Asbell testified that he had about 2½ weeks training in blood stain patterns and spatter. He described the workshops approach and his participation in the conclusions of the workshops. He stated that he also would go to all suicides, homicide and "a lot of shootings." ROA 1851-52.

Judge Shuler then additionally voir dired Sgt. Asbell about his hands on experience. Sgt. Asbell stated he saw spatter quite often and that there were seven shootings the first two months of the year and one was a homicide. He stated that he had made determinations on blood spatter interpretation and described one crime situation involving a victim who claimed his girlfriend had shot him, but the spatter assisted them in determining instead that it was an aborted attempted suicide. ROA 1854.

The trial judge then ruled "over the defendant's objection, I am going to allow him to testify as an expert in the field. R. 1855, ll. 1-22. After his qualification, Solicitor Bailey then had Sgt. Asbell give an opinion based upon certain stains revealed at the scene that "at some time she was standing in her own blood" or attempting to stand. ROA p. 1857-1858.

Respondents submit that the Applicant is unable to show deficient performance in counsel's failure to object in the guilt phase to Sgt Asbell qualifications as an expert in blood spatter. First, unlike the penalty phase he was not offered as an expert. Second, unlike the penalty phase, he did not give an expert opinion concerning blood spatter analysis. In the guilt phase, he merely gave a definition of what blood spatter was generally and identified certain areas. Counsel cannot be deemed deficient in failing to impose an objection to an expert opinion without qualification or proffer, particularly where it does not appear that an "expert" opinion was given.

Even if we assume that the general testimony given in the guilt phase was an "expert" opinion, Weik cannot show a reasonable probability that result would have been different had he objected to the qualifications because, when proffered in the penalty phase, Judge Shuler, after presentation of the qualifications admitted Sgt. Asbell as an expert in blood spatter. R. 1855. The Applicant's reliance upon McDill is misplaced. In McDill, the court of appeals found that the failure to qualify a highway patrolman as an expert in accident reconstruction and excluding his expert opinion was error, but harmless error. Here, Sgt. Asbell was ultimately determined by the trial court, albeit after the guilt phase to be qualified to give an expert opinion on blood spatter based upon his training and experience. It remains crystal clear that had the objection been asserted in the guilt phase, the result would have been the same. He has failed and will fail in his burden of proof. The record conclusively contradicts his claim and must be dismissed.

G. TORTURE AS AN AGGRAVATING FACTOR AND DUE PROCESS.

In his final amended claim, Weik makes the bare contention that the state's use of the torture aggravating factor is overbroad and in violation of the due process clause of the state and federal constitutions. This issue is not properly presented in a state post-conviction relief

proceeding. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for an appeal. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue prior to or during the sentencing proceeding and then on appeal. The failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation for this initial reason.

Alternately, even before the merits of the claim would need to be addressed, it is clear that if the claim had been timely raised at trial or in the appeal, it would have been denied because he was additionally found to be in violation of a second statutory aggravating factor — murder was committed while in the commission of burglary in the first degree. State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004) (where death sentence is supported by other valid aggravators, failure of one aggravator does not void death sentence); See S.C. Code Ann. § 16-3-20(B) (2003) (if statutory aggravating circumstance found, defendant sentenced to either death or life imprisonment); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000) (jury may recommend life imprisonment for any reason or no reason at all); State v. Elkins, 312 S.C. 541, 436 S.E.2d 178 (1993) (under our capital sentencing scheme, jury does not "weigh" aggravating circumstances; the failure of one aggravating circumstance does not require reversal where there remains a valid aggravator). See State v. Plath and Arnold, 281 S.C. 1, 313 S.E.2d 619 (1984), citing Zant v. Stephens, 462 U.S. 862, 103 S.Ct. 2733, 77 L.Ed.2d 235 (1983).

In a recently announced decision, Brown v. Sanders, --- U.S. ---, 126 S.Ct. 884, 163 L.Ed.2d 723 (2006), the Supreme Court has stated that the "weighing/non-weighing scheme

is accurate as far as it goes, but it now seems to us needlessly complex and incapable of providing for the full range of possible variations" in state death-penalty sentencing procedures. *Id.*, 884, 126 S.Ct. 884. Instead, "we are henceforth guided by the following rule: An invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process unless one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances." *Id.* at ----, 126 S.Ct. 884 (footnote omitted). In other words, where the allegation of error is "the skewing that could result from the jury's considering as aggravation properly admitted evidence that should not have weighed in favor of the death penalty," *id.* at ----, 126 S.Ct. 884, constitutional error occurs "only where the jury could not have given aggravating weight to the same facts and circumstances under the rubric of some other, valid sentencing factor," *id.* at ----, 126 S.Ct. 884. In addition to the narrow situation addressed in *Sanders*, the Court recognized that constitutional error also may arise from "other distortions caused by the invalidated factor beyond the mere addition of an improper aggravating element." *Id.* at ----, 126 S.Ct. 884 n. 6.

South Carolina statutory scheme is that of a non-weighing (consider) state. In *Brown*, the Court stated :

By contrast, in a non-weighing State--a State that permitted the sentencer to consider aggravating factors different from, or in addition to, the eligibility factors--this automatic skewing would not necessarily occur. It would never occur if the aggravating factors were entirely different from the eligibility factors. Nor would it occur if the aggravating factors added to the eligibility factors a category (such as an omnibus "circumstances of the crime" factor, which is quite common) that would allow the very facts and circumstances relevant to the invalidated eligibility factor to be weighed in aggravation under a different rubric. We therefore set forth different rules governing the consequences of an invalidated eligibility factor in a non-weighing State. [FN3] The sentencer's consideration of an invalid eligibility factor amounts to constitutional error in a non-weighing State in two situations. First, due process requires a defendant's death sentence to be set aside if the reason for the invalidity of the eligibility factor is

that it "authorizes a jury to draw adverse inferences from conduct that is constitutionally protected," or that it "attache[s] the 'aggravating' label to factors that are constitutionally impermissible or totally irrelevant to the sentencing process, ... or to conduct that actually should militate in favor of a lesser penalty." Zant, 462 U.S., at 885, 103 S.Ct. 2733. Second, the death sentence must be set aside if the jury's consideration of the invalidated eligibility factor allowed it to hear evidence that would not otherwise have been before it. See *id.*, at 886, 103 S.Ct. 2733; see also *Tuggle v. Netherland*, 516 U.S. 10, 13-14, 116 S.Ct. 283, 133 L.Ed.2d 251 (1995) (per curiam).

Under the Brown analysis: An invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process unless one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances. In Brown, The jury's consideration of invalid special circumstances in Sanders' case gave rise to no constitutional violation. In California, the "special circumstances" listed in § 190.2 are the eligibility factors designed to satisfy Furman's narrowing requirement. If the jury finds the existence of one of those circumstances, it must "take into account" a separate list of sentencing factors, including § 190.3(a)'s "circumstances of the crime" factor. That factor has the effect of rendering all the specified factors nonexclusive, thus making California (in this Court's prior terminology) a non-weighing State. Setting aside the weighing/non-weighing dichotomy and applying the more direct analysis set out here, two of the four special circumstances were invalidated, but the remaining two are sufficient to satisfy Furman's narrowing requirement and alone rendered Sanders death eligible. Moreover, all of the facts and circumstances admissible to prove the invalid eligibility factors were also properly adduced as aggravating facts and circumstances under the "circumstances of the crime" sentencing factor. Even if § 190.3(a)'s direction to consider "the existence of any special circumstances found to be true" placed special emphasis upon the facts and circumstances relevant to the invalid factors, that impact "cannot

fairly be regarded as a constitutional defect in the sentencing process," Zant, supra, at 889, 103 S.Ct. 2733. Pp. 892-894.

Like Brown, since the physical torture of the victim arises from the circumstances of the crime and victim impact evidence, matters the jurors would have been able to consider these matters whether the torture factor existed or not, any alleged invalidity of the cannot void the death penalty. See State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996) (forensic pathologist could testify as to pain victim endured and although physical torture was not submitted to jury as aggravating circumstance, evidence regarding torture was still admissible as going to circumstances of crime). He has failed on this alternative ground which independently defeats his constitutional claim.

Further, and independently, the physical torture aggravating factor is not void for vagueness. It clearly performs a narrowing function as established under Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (per curiam). The statutory aggravating circumstance of physical torture occurs (1) when the victim is subjected to serious physical abuse before death or (2) when the victim is subjected to an aggravated battery before death. State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Physical torture is not predicated upon the amount of pain suffered by a murder victim. Although conscious awareness of pain may buttress the conclusion that the victim was subjected to serious physical abuse before death, its absence does not foreclose a finding of physical torture; the abusive and depraved nature of the homicidal assault is not erased solely because the victim mercifully may have been rendered unconscious at the outset of the attack. State v. Johnson, 338 S.C. 114, 525 S.E.2d 519, cert. denied 531 U.S. 840, 121 S.Ct. 104, 148 L.Ed.2d 62 (2000).

In Smith v. Moore, 137 F.3d 808 (4th Cir.1998), the Fourth Circuit held that the "physical torture" aggravating factor included in South Carolina's capital sentencing scheme properly narrowed the class of persons eligible for death penalty. To satisfy the Eighth and Fourteenth Amendments, a state's capital sentencing scheme must suitably channel or limit the jury's discretion in imposing the death penalty. See Lewis v. Jeffers, 497 U.S. 764, 774, 110 S.Ct. 3092, 3098-99, 111 L.Ed.2d 606 (1990); Maynard v. Cartwright, 486 U.S. 356, 362-64, 108 S.Ct. 1853, 1858-59, 100 L.Ed.2d 372 (1988); Godfrey v. Georgia, 446 U.S. 420, 428, 100 S.Ct. 1759, 1764-65, 64 L.Ed.2d 398 (1980) (plurality opinion). Whether a particular aggravating factor suitably channels or limits a jury's discretion depends, in part, on whether it "genuinely narrow[s] the class of persons eligible for the death penalty." Zant v. Stephens, 462 U.S. 862, 877, 103 S.Ct. 2733, 2742, 77 L.Ed.2d 235 (1983). An aggravating factor does not genuinely narrow the class of persons eligible for the death penalty "[i]f the sentencer fairly could conclude that [it] applies to every defendant." Arave v. Creech, 507 U.S. 463, 474, 113 S.Ct. 1534, 1542, 123 L.Ed.2d 188 (1993). In Smith, as apparently here, he contends that South Carolina's "physical torture" aggravating factor fails to genuinely narrow the class of persons eligible for the death penalty because it does not require an intent to torture separate and distinct from the intent to kill. The Fourth Circuit rejected this assertion.

Under South Carolina law, physical torture exists "when the victim is intentionally subjected to serious physical abuse prior to death." State v. Smith, 298 S.C. 482, 381 S.E.2d 724, 726 (1989) (emphasis added); see also State v. Elmore, 279 S.C. 417, 308 S.E.2d 781, 785 n. 2 (1983). Thus, despite contentions to the contrary, it is clear that South Carolina law requires an intent to torture. Using the charge upheld in Elmore, 308 S.E.2d at 785 n. 2, the trial court defined physical torture as follows:

Physical torture is the intentional infliction of serious, vile, horrible or inhuman abuse upon the body of another before death. The instantaneous death of the victim does not constitute torture. Physical torture may include the malicious infliction of bodily harm to another by depriving him or her of a member of his or her body or by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member of his or her body, or the intentional and unmerciful prolonging of severe pain and abuse to the body of another, or the intentional and unmerciful infliction of serious and extensive physical pain and abuse to the body of another. (J.A. at 2093 (emphasis added).)

The Fourth Circuit concluded that the trial court's instruction adequately conveyed to the jury that it had to find an intent to torture.

Moreover, the trial court's definition of torture "make[s] it] clear that something other than those factors that a juror might expect to find present in an ordinary murder must be present." Jones v. Murray, 976 F.2d 169, 174 (4th Cir.1992). In other words, an ordinary person "could [not] conclude that [the 'physical torture'] aggravating circumstance applies to every defendant," Arave, 507 U.S. at 474, 113 S.Ct. at 1542, who intended to kill his victim. Cf. Cartwright, 486 U.S. at 364, 108 S.Ct. at 1859 (invalidating aggravating circumstance that "an ordinary person could honestly believe" described every murder); Godfrey, 446 U.S. at 428-29, 100 S.Ct. at 1764-65 (invalidating aggravating circumstance that "[a] person of ordinary sensibility could" honestly believe described "almost every murder"). Accordingly, it is clear that South Carolina's "physical torture" aggravating circumstance "genuinely narrow[s] the class of persons eligible for the death penalty." Zant, 462 U.S. at 877, 103 S.Ct. at 2742. His constitutional claim otherwise must be denied.

Therefore for each of the reasons set forth above, his free-standing constitutional claim fails to present a ground for post-conviction relief because it is procedurally barred, would not require relief even if correct, and lacks merit under the precedent of Smith. Under each of these independent theories, the Application must be dismissed.

IV.

The State therefore requests that this Court require specificity of allegations set out above under claims 9(a)-9(e). Absent greater specificity, Respondents submits the claims must be dismissed at the convening of a hearing pursuant to Rule 12(e). As to all other allegations, the State 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.

V.

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

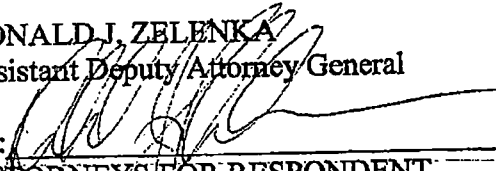
VI.

WHEREFORE, having made its Return, the State requests that the matter be dismissed or appropriately amended a hearing prior to a hearing.

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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Telephone: (803) 734-6305

Columbia, South Carolina
July 20, 2006

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

JOHN EDWARD WEIK, #5068)

C/A No. 03-CP-18-1070

Applicant,)

vs.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)

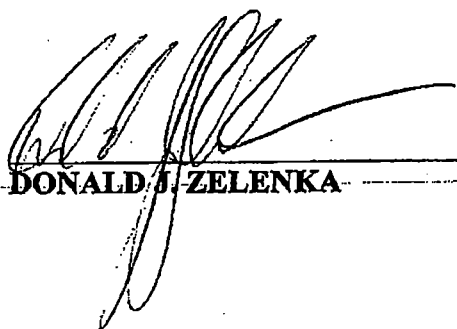
Respondent.)

I, Donald J. Zelenka, hereby certify that I have served the *Return to Amended Application for Post-Conviction Relief* in the foregoing by depositing copy of same in the United States mail, postage prepaid, on the following:

Michael P. O'Connell, Esquire
Stirling & O'Connell
P.O. Box 882
Charleston, SC 29402-0882

Melissa Kimbrough, Esquire
1720 Main Street, Suite 106
Columbia, SC 29201

This 20th day of July, 2006.



DONALD J. ZELENKA

AT TORNEY 9-11-06
RECEIVED 2365

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

JOHN E. WEIK,)

Petitioner/ Applicant.)

vs.)

JON OZMINT, COMMISSIONER OF THE
SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS AND THE STATE OF
SOUTH CAROLINA)

Respondents.)

COURT OF COMMON PLEAS.
FIRST JUDICIAL CIRCUIT
CASE NO: CP-18-1076

2006 SEP -5 PM 1:15
CLERK OF COURT
DORCHESTER COUNTY
J. H. H. H.
SECOND AMENDED
APPLICATION
FOR POST CONVICTION
RELIEF

1. Place of Detention: Lieber Correctional Institution, Post Office Box 205, Ridgeville, S.C. 29472.
2. Name and Location of Court which imposed sentence: M. Duane Shuler, Circuit Court Judge.
3. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - (a) 98-GS-18-749—Murder
 - (b) 98-GS-18-750—First Degree Burglary
4. The date up upon which sentence was imposed and the terms of the sentence:
 - (a) May 29, 1999-Death for Murder
 - (b) May 29, 1999- Life for Burglary
5. Check whether a finding of guilty was made
 - (a) After a plea of guilty- no.
 - (b) After a plea of not guilty- yes.
 - (c) After a plea of nolo contender- no.

6. Did you appeal from the judgment of conviction of the imposition of a sentence?
Yes
7. If you answered "yes" to (6), list:
- (a) The name of each Court to which you appealed:
- i. Opinion- Affirmed- South Carolina Supreme Court
 - ii. Petition for Writ of Certiorari Denied- United States Supreme Court.
 - iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Opinion- Affirmed- South Carolina Supreme Court
 - ii. Petition for Writ of Certiorari Denied- United States Supreme Court.
 - iii. N/A
- (c) the date of each such result:
- i. September 3, 2002
 - ii. June 16, 2003
 - iii. N/A
- (d) if know, citations of any written opinion or orders entered pursuant to such results:
- i. 2002 WL 2008242
 - ii. Cert. denied 2003 WL 1948540 (U.S.S.C.)
 - iii. N/A
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant received ineffective assistance of counsel during the trial of his case inasmuch as counsel failed to proffer psychiatric testimony and evidence in support of their motion for a second Blair/competency hearing. *Strickland v. Washington*, 448 U.S. 668 (1984); *State v. Blair*, 275 S.C. 529, 273 S.E. 2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E. 2d 49 (2004); *State v. Burgess*, 356 S.C. 572, 590 S.E. 2d 42 (Ct. App. 2003); *State v. Drayton*, 270 S.C. 582, 243 S.E. 2d 458 (1978); *Hughes v. State*, 367 S.C. 389, 626 S.E. 2d 805 (2006).

- (b) Applicant received ineffective assistance of counsel inasmuch as counsel failed to offer a guilty but mentally ill defense during the guilt-or-innocence phase of his trial. *Strickland v. Washington*, supra; *State v. Hatfield*, 300 S.C. 469, 388 S.E. 2d 802 (1990); S.C. Code Statute 17-24-20.
- (c) Applicant received ineffective assistance of counsel inasmuch as counsel failed to provide evidence of Applicant's background to the State's experts when there is a reasonable probability that such evidence would have changed the opinions rendered by the State's experts at both the competency hearing and at the penalty phase. *Strickland v. Washington*, supra; *Williams v. Taylor*, supra
- (d) Applicant received ineffective assistance of counsel inasmuch as counsel failed to object to the trial judge's erroneous jury charge that malice could be implied from the use of a deadly weapon. *Strickland v. Washington*, supra; *Yates v. Evatt*, 500 U.S. 391 (1991)
- (e) Applicant received ineffective assistance of counsel inasmuch as counsel failed to object to the solicitor's offering expert testimony from Earl Asbell during the guilt phase when this witness had never been qualified in the area of blood spatter. *Strickland v. Washington*, supra; *McDill v. Mark's Auto Sales*, 626, S.E. 2d 52 (2006).
- (f) Applicant was denied due process of law and a fair sentencing determination based on the State's use of "torture" as an aggravator which, as defined under South Carolina law, is unconstitutionally overbroad. U.S. Const. Amend V, VIII, and XIV, the South Carolina Constitution and federal and state law.
- (g) Applicant was not represented by two lawyers as required by S.C. Code Section 16-3-20(B)(1) and thus denied a fair trial because one of the lawyers appointed by the Court, Marva Hardee-Thomas, did not act as a lawyer during preparation for the trial and during the trial but merely provided clerical assistance to the other appointed counsel. *State v. Diddlemeyer*, 296 S.C. 235, 371 S.E.2d 793 (SC 1988).
- (h) Applicant was denied effective assistance of counsel at the penalty phase inasmuch his lawyers did not object to the trial judge submitting the aggravating circumstance of torture which, as defined under South Carolina law, is unconstitutionally overbroad. U.S. Const. Amends. Fifth, Eighth and fourteenth, the South Carolina Constitution and federal and state law.
- (i) Applicant was denied effective assistance of counsel at the penalty phase when his attorneys failed to object to the trial judge's faulty instructions to the Applicant during the penalty phase that Applicant's final argument to the jury was restricted to commenting on the matters in evidence and the appropriate sentence he should receive. The Applicant was not instructed by the trial judge that he

could also express remorse and ask for mercy and as a result elected not to argue to the jury.

(j) Applicant was denied effective assistance of counsel at the competency hearing because trial counsel did not timely hire investigators so they would have had sufficient time prior to trial to investigate and gather all of the Applicant's personal and family background. If complete evidence of the Applicant's personal and family background had been supplied to the Applicant's mental health experts, their testimony would have been substantially bolstered and the testimony of the state's mental health experts would have been impeached which would probably have resulted in finding that the Applicant was incompetent to stand trial.

(k) Applicant was denied effective assistance of counsel at the competency hearing because trial counsel did not provide evidence of the Applicant's personal and family background to their mental health experts and had they done so, the mental health experts' testimony would have been substantially bolstered and the testimony of the state's mental health experts impeached which would probably have resulted in a finding that the Applicant was not competent to stand trial.

(l) Applicant was denied effective assistance of counsel at the competency hearing because trial counsel failed to properly prepare the mental health expert's testimony including but limited to not asking them in advance what they would be able to testify to as experts, not providing them with evidence of the Applicant's background which would have bolstered their testimony, not timely providing them the Applicant's records from the State Hospital, and not informing the experts of the questions they were going to ask the experts. Had trial counsel done these things, the Applicant would probably have been found incompetent to stand trial.

(m) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel did not timely hire investigators so they would have had sufficient time prior to trial to investigate and gather all of the Applicant's personal and family background. If complete evidence of the Applicant's personal and family background had been supplied to the Applicant's mental health experts and the social worker, their testimony would have been substantially bolstered and the testimony of the state's mental health experts would have been impeached which would probably have resulted in life sentence.

(n) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel did not provide evidence of the Applicant's personal and family background to their mental health experts and the social worker and had they done so, their testimony would have been substantially bolstered and the testimony of the state's mental health experts impeached which would probably have resulted in a life sentence.

(o) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel failed to properly prepare the mental health expert's testimony including but limited to not asking them in advance what they would be able to testify to as experts, not providing them with evidence of the Applicant's background which would have bolstered their testimony, not timely providing them the Applicants records from the State Hospital, and not informing the experts of the questions they were going to ask the experts. Had trial counsel done these things, the Applicant would probably have been sentenced to life imprisonment.

(p) The Applicant was denied effective assistance of counsel when trial counsel did not provide a sufficient basis for their continuance motion at the hearing on May 18, 2006 when such basis was available namely a letter to them from the mitigation investigator dated April 29, 1999 which set out in detail trial counsel's inept cooperation with and supervision of the mitigation investigator -- one Patti Rickborn -- which resulted in her resigning from the case. If trial counsel had provided this letter to the trial judge, he would have realized that trial counsel's on the record explanation of the reason why the mitigation expert resigned on April 29, 1999 was not accurate and the trial judge would have been alerted that they were not providing effective assistance of counsel to the Applicant, would have probably continued the trial so the new mitigation investigator would have had time to gather complete information about the Applicant's personal and family background which would have been provided to the mental health experts and presented to the jury and would probably have resulted in a life sentence.

(q) Applicant was denied effective assistance of counsel when trial counsel did not report to the trial judge their incompetence in their representation of Applicant as set out in the April 29, 1999 letter of Patti Rickborn. If the trial judge had been given Ms. Rickborn's letter, he probably would have relieved trial counsel, granted a continuance and appointed competent counsel who would have provided effective counsel as opposed to the ineffective assistance provided by trial counsel as set out in this Application and the Applicant would probably have received a life sentence.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)(a)-(j): See the facts alleged in paragraphs 9(a) through 9(r) above.
11. Prior to this application have you filed with respect to this conviction
 - (a) any petition in a State Court under the South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-

conviction relief? No.

(c) any petitions in United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

(i) N/A

(b) the name and location of the Court in which each was filed:

(i) N/A

(c) the disposition thereof:

(i) N/A

(d) the date of each such disposition:

(i) N/A

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

(i) N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

(i) N/A

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

(i) N/A

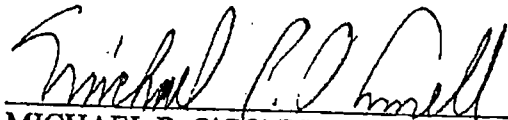
15. If any grounds set forth in (9) has not previously been presented to any court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Not ripe for adjudication

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

- (a) Your arraignment and plea? Percy Beauford and Marva Hardee Thomas, Esquires
- (b) your trial, if any? Percy Beauford and Marva Hardee Thomas, Esquires
- (c) your sentencing? Same as trial.
- (d) your appeal, if any, from the judgment of conviction or imposition of sentence? Robert M. Dudek, Esquire
- (e) preparation, presentation or consideration of any petitions, motions or application with respect to this conviction, which you filed?
17. If you answered "yes" to one or more parts of (16), list:
- (a) the name and address of each attorney who represented you
- (i) Percy Beauford, 204 N. Live Oak, Moncks Corner, 29461.
- (ii) Marva Hardee Thomas, 130 E. Richardson Ave, Summerville, S.C. 29483
- (iii) Robert M. Dudek, 1205 Pendleton St. Rm 306, Columbia, SC 29201.
- (b) the proceedings at which each such attorney represented you:
- (i) Arraignment, trial and sentencing.
- (ii) Arraignment, trial and sentencing.
- (iii) Appeal to the South Carolina Supreme Court and United States Supreme Court.
18. State clearly the relief you seek in filing this application.
- A new trial and/or sentencing proceeding.
19. Are you now under sentence from any other court that you have not challenged?
- No.

Respectfully Submitted,



MICHAEL P. O'CONNELL, ESQUIRE
STIRLING & O'CONNELL

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(843) 577-9890 phone

(843) 577-9826 facsimile

MELISSA J. KIMBROUGH, ESQ.

1811 Pickens Street

Columbia, SC 29201

(803) 765-2796

September 1, 2006

ATTORNEYS FOR APPLICANT

CERTIFIED COPY

STATE OF SOUTH CAROLINA 107 FEB -1 PM 12: 02 COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER *Cheryl Graham* CASE NO: CP-18-1070
JOHN E. WEIK, 2003-

CLERK OF COURT
DORCHESTER COUNTY

Petitioner/ Applicant.

vs.

JON OZMINT, COMMISSIONER OF THE
SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS AND THE STATE OF
SOUTH CAROLINA

Respondents.

) MOTION TO FILE A THIRD
) AMENDED APPLICATION
) FOR POST CONVICTION
) RELIEF OR IN THE
) ALTERNATIVE TO AMEND
THE APPLICATION FOR POST
) CONVICTION RELIEF TO
) CONFORM TO THE
EVIDENCE

Pursuant to SCRCP 15(a) the Applicant through his attorneys moves this Court for an Order allowing him to amend the Second Amended Application for Post-Conviction Relief by adding as an additional ground for relief as follows (the proposed Third Amended Application is attached):

(s) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel did not present evidence to the jury of the Applicant's personal and family background which was in their possession at the time of trial. If the evidence of the Applicant's personal and family background which was in trial counsel's possession had been presented to the jury, the jury would probably have sentenced him to life.¹

In the alternative, the Applicant moves to amend the Second Amended Application to add ground the above ground (s) to conform to the proof adduced at trial.

During the trial of this case in September of 2006, Petitioner's the undersigned counsel for Petitioner believes he filed and served opposing counsel in the courtroom the attached Third Amended Application for Post Conviction Relief. He also believes that the Third Amended Application was accepted by the Court without objection by

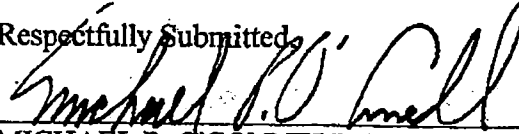
¹ The Third amended Application for Post-Conviction Relief actually added two grounds for relief: grounds (s) set out above and ground (t). The Applicant is abandoning ground (t).

Respondents. Applicant's counsel learned on January 18, 2006 that the Clerk of Court for Dorchester County does not have the Third Amended Application on file.

In the event the Court does not consider the Third Amended Application for Post-Conviction Relief as having been accepted by the Court, the Applicant pursuant to SCRCF 15(a), asks the Court for leave to file the Third Amended Application for Post Conviction Relief and in particular the applicant wishes this Court to consider the allegation contained in ground (s) as set out above. This amendment does not in any respect prejudice the Respondents because the issue raised in ground (s) was litigated during the trial with no objection from the Respondents. For example, private investigator Scott Parker testified during the Applicant's case that he provided substantial amounts of mitigating evidence to Applicant's defense counsel. The record is clear that at Applicant's death penalty trial, defense counsel made no use of this mitigating information. During the testimony of the applicant's trial counsel, they admitted they had the mitigating information from the investigator in their possession but failed to use it. In the alternative, the Applicant moves pursuant to SCRCF15 (b) to amend the Application and specifically to add ground (s) to conform to the evidence because the issue raised in ground (s) was actually litigated without objection at the trial as explained above.

Wherefore the Applicant prays that this Court grant his Motion and allow him to file the attached Third Amended Application for Post Conviction Relief or in the alternative to amend his Application for Post Conviction Relief by adding ground (s) as set out above and in the proposed Third Amended Application for Post Conviction Relief to conform to the evidence.

Respectfully Submitted,



MICHAEL P. O'CONNELL, ESQUIRE
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January 18, 2007

ATTORNEYS FOR APPLICANT

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

JOHN E. WEIK,

Petitioner/ Applicant.

vs.

JON OZMINT, COMMISSIONER OF THE
SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS AND THE STATE OF
SOUTH CAROLINA

Respondents.

COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASE NO: 2003-CP-18-1070

**THIRD AMENDED
APPLICATION
FOR POST CONVICTION
RELIEF**

 CERTIFIED COPY
2007 FEB -1 PM 12:02
Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

1. Place of Detention: Lieber Correctional Institution, Post Office Box 205, Ridgeville, S.C. 29472.
2. Name and Location of Court which imposed sentence: M. Duane Shuler, Circuit Court Judge.
3. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - (a) 98-GS-18-749—Murder
 - (b) 98-GS-18-750—First Degree Burglary
4. The date up upon which sentence was imposed and the terms of the sentence:
 - (a) May 29, 1999-Death for Murder
 - (b) May 29, 1999- Life for Burglary
5. Check whether a finding of guilty was made
 - (a) After a plea of guilty- no.
 - (b) After a plea of not guilty- yes.
 - (c) After a plea of nolo contender- no.

6. Did you appeal from the judgment of conviction of the imposition of a sentence?
Yes

7. If you answered "yes" to (6), list:

(a) The name of each Court to which you appealed:

- i. Opinion- Affirmed- South Carolina Supreme Court
- ii. Petition for Writ of Certiorari Denied- United States Supreme Court.
- iii. N/A

(b) the result in each such Court to which you appealed:

- i. Opinion- Affirmed- South Carolina Supreme Court
- ii. Petition for Writ of Certiorari Denied- United States Supreme Court.
- iii. N/A

(c) the date of each such result:

- i. September 3, 2002
- ii. June 16, 2003
- iii. N/A

(d) if know, citations of any written opinion or orders entered pursuant to such results:

- i. 2002 WL 2008242
- ii. Cert. denied 2003 WL 1948540 (U.S.S.C.)
- iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Applicant received ineffective assistance of counsel during the trial of his case inasmuch as counsel failed to proffer psychiatric testimony and evidence in support of their motion for a second Blair/competency hearing. *Strickland v. Washington*, 448 U.S. 668 (1984); *State v. Blair*, 275 S.C. 529, 273 S.E. 2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E. 2d 49 (2004); *State v. Burgess*, 356 S.C. 572, 590 S.E. 2d 42 (Ct. App. 2003); *State v. Drayton*, 270 S.C. 582, 243 S.E. 2d 458 (1978); *Hughes v. State*, 367 S.C. 389, 626 S.E. 2d 805 (2006).

(b) Applicant received ineffective assistance of counsel inasmuch as counsel failed to offer a guilty but mentally ill defense during the guilt-or-innocence phase of his trial. *Strickland v. Washington*, supra; *State v. Hatfield*, 300 S.C. 469, 388 S.E. 2d 802 (1990); S.C. Code Statute 17-24-20.

(c) Applicant received ineffective assistance of counsel inasmuch as counsel failed to provide evidence of Applicant's background to the State's experts when there is a reasonable probability that such evidence would have changed the opinions rendered by the State's experts at both the competency hearing and at the penalty phase. *Strickland v. Washington*, supra, *Williams v. Taylor*, supra

(d) Applicant received ineffective assistance of counsel inasmuch as counsel failed to object to the trial judge's erroneous jury charge that malice could be implied from the use of a deadly weapon. *Strickland v. Washington*, supra; *Yates v. Evatt*, 500 U.S. 391 (1991)

(e) Applicant received ineffective assistance of counsel inasmuch as counsel failed to object to the solicitor's offering expert testimony from Earl Asbell during the guilt phase when this witness had never been qualified in the area of blood spatter. *Strickland v. Washington*, supra; *McDill v. Mark's Auto Sales*, 626, S.E. 2d 52 (2006).

(f) Applicant was denied due process of law and a fair sentencing determination based on the State's use of "torture" as an aggravator which, as defined under South Carolina law, is unconstitutionally overbroad. U.S. Const. Amend V, VIII, and XIV, the South Carolina Constitution and federal and state law.

(g) Applicant was not represented by two lawyers as required by S.C. Code Section 16-3-20(B)(1) and thus denied a fair trial because one of the lawyers appointed by the Court, Marva Hardee-Thomas, did not act as a lawyer during preparation for the trial and during the trial but merely provided clerical assistance to the other appointed counsel. *State v. Diddlemeyer*, 296 S.C. 235, 371 S.E.2d 793 (SC 1988).

(h) Applicant was denied effective assistance of counsel at the penalty phase inasmuch his lawyers did not object to the trial judge submitting the aggravating circumstance of torture which, as defined under South Carolina law, is unconstitutionally overbroad. U.S. Const. Amends. Fifth, Eighth and fourteenth, the South Carolina Constitution and federal and state law.

(i) Applicant was denied effective assistance of counsel at the penalty phase when his attorneys failed to object to the trial judge's faulty instructions to the Applicant during the penalty phase that Applicant's final argument to the jury was restricted to commenting on the matters in evidence and the appropriate sentence he should receive. The Applicant was not instructed by the trial judge that he

could also express remorse and ask for mercy and as a result elected not to argue to the jury.

(j) Applicant was denied effective assistance of counsel at the competency hearing because trial counsel did not timely hire investigators so they would have had sufficient time prior to trial to investigate and gather all of the Applicant's personal and family background. If complete evidence of the Applicant's personal and family background had been supplied to the Applicant's mental health experts, their testimony would have been substantially bolstered and the testimony of the state's mental health experts would have been impeached which would probably have resulted in finding that the Applicant was incompetent to stand trial.

(k) Applicant was denied effective assistance of counsel at the competency hearing because trial counsel did not provide evidence of the Applicant's personal and family background to their mental health experts and had they done so, the mental health experts' testimony would have been substantially bolstered and the testimony of the state's mental health experts impeached which would probably have resulted in a finding that the Applicant was not competent to stand trial.

(l) Applicant was denied effective assistance of counsel at the competency hearing because trial counsel failed to properly prepare the mental health expert's testimony including but limited to not asking them in advance what they would be able to testify to as experts, not providing them with evidence of the Applicant's background which would have bolstered their testimony, not timely providing them the Applicant's records from the State Hospital, and not informing the experts of the questions they were going to ask the experts. Had trial counsel done these things, the Applicant would probably have been found incompetent to stand trial.

(m) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel did not timely hire investigators so they would have had sufficient time prior to trial to investigate and gather all of the Applicant's personal and family background. If complete evidence of the Applicant's personal and family background had been supplied to the Applicant's mental health experts and the social worker, their testimony would have been substantially bolstered and the testimony of the state's mental health experts would have been impeached which would probably have resulted in life sentence.

(n) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel did not provide evidence of the Applicant's personal and family background to their mental health experts and the social worker and had they done so, their testimony would have been substantially bolstered and the testimony of the state's mental health experts impeached which would probably have resulted in a life sentence.

- (o) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel failed to properly prepare the mental health expert's testimony including but limited to not asking them in advance what they would be able to testify to as experts, not providing them with evidence of the Applicant's background which would have bolstered their testimony, not timely providing them the Applicants records from the State Hospital, and not informing the experts of the questions they were going to ask the experts. Had trial counsel done these things, the Applicant would probably have been sentenced to life imprisonment.
- (p) The Applicant was denied effective assistance of counsel when trial counsel did not provide a sufficient basis for their continuance motion at the hearing on May 18, 2006 when such basis was available namely a letter to them from the mitigation investigator dated April 29, 1999 which set out in detail trial counsel's inept cooperation with and supervision of the mitigation investigator -- one Patti Rickborn -- which resulted in her resigning from the case. If trial counsel had provided this letter to the trial judge, he would have realized that trial counsel's on the record explanation of the reason why the mitigation expert resigned on April 29, 1999 was not accurate and the trial judge would have been alerted that they were not providing effective assistance of counsel to the Applicant, would have probably continued the trial so the new mitigation investigator would have had time to gather complete information about the Applicant's personal and family background which would have been provided to the mental health experts and presented to the jury and would probably have resulted in a life sentence.
- (q) Applicant was denied effective assistance of counsel when trial counsel did not report to the trial judge their incompetence in their representation of Applicant as set out in the April 29, 1999 letter of Patti Rickborn. If the trial judge had been given Ms. Rickborn's letter, he probably would have relieved trial counsel, granted a continuance and appointed competent counsel who would have provided effective counsel as opposed to the ineffective assistance provided by trial counsel as set out in this Application and the Applicant would probably have received a life sentence.
- (r) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel did not timely hire investigators so they would have had sufficient time prior to trial to investigate and gather all of the Applicant's personal and family background. If complete evidence of the Applicant's personal and family background had been presented to the jury, the Applicant would probably have been sentenced to life by the jury.

(s) Applicant was denied effective assistance of counsel at the penalty phase because trial counsel did not present evidence to the jury of the Applicant's personal and family background which was in their possession at the time of trial. If the evidence of the Applicant's personal and family background which was in trial counsel's possession had been presented to the jury, the jury would probably have sentenced him to life.

(t) Applicant was denied effective assistance of counsel at the competency hearing because trial counsel did not present evidence to the trial judge of the Applicant's personal and family background which was in their possession at the time of trial. If the evidence of the Applicant's personal and family background which was in trial counsel's possession had been presented to the trial judge, he probably would have found the Applicant incompetent to stand trial.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)(a)-(j): See the facts alleged in paragraphs 9(a) through 9(r) above.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under the South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? No.

(c) any petitions in United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

(i) N/A

(b) the name and location of the Court in which each was filed:

(i) N/A

(c) the disposition thereof:

(i) N/A

(d) the date of each such disposition:

(i) N/A

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

(i) N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
14. If you answered "yes" to (13), identify:
- (a) which grounds have been presented:
(i) N/A
- (b) the proceedings in which each ground was raised:
(i) N/A
15. If any grounds set forth in (9) 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:
- (a) Not ripe for adjudication
16. Were you represented by an attorney at any time during the course of:
- (a) Your arraignment and plea? Percy Beauford and Marva Hardee Thomas, Esquires
- (b) your trial, if any? Percy Beauford and Marva Hardee Thomas, Esquires
- (c) your sentencing? Same as trial.
- (d) your appeal, if any, from the judgment of conviction or imposition of sentence? Robert M. Dudek, Esquire
- (e) preparation, presentation or consideration of any petitions, motions or application with respect to this conviction, which you filed?
17. If you answered "yes" to one or more parts of (16), list:
- (a) the name and addresse of each attorney who represented you
- (i) Percy Beauford, 204 N. Live Oak, Moncks Corner, 29461.
- (ii) Marva Hardee Thomas, 130 E. Richardson Ave, Summerville, S.C. 29483
- (iii) Robert M. Dudek, 1205 Pendleton St. Rm 306, Columbia, SC 29201.

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

(i) Arraignment, trial and sentencing.

(ii) Arraignment, trial and sentencing.

(iii) Appeal to the South Carolina Supreme Court and United States Supreme Court.

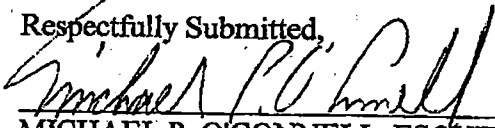
18. State clearly the relief you seek in filing this application.

A new trial and/or sentencing proceeding.

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

No.

Respectfully Submitted,


MICHAEL P. O'CONNELL, ESQUIRE
STIRLING & O'CONNELL
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MELISSA J. KIMBROUGH, ESQ.
1811 Pickens Street
Columbia, SC 29201
(803) 765-2796

January 18, 2007

ATTORNEYS FOR APPLICANT

STATE OF SOUTH CAROLINA

DORCHESTER COUNTY

John E. Weik,

Plaintiff,

-vs-

Jon Ozmint, Commissioner of the South
Carolina Department of Corrections and the
State of South Carolina.

Defendant.

IN THE FAMILY COURT
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO: 03-CP-18-575

MOTION INFORMATION FORM AND COVER SHEET

CERTIFIED COPY
2007 FEB -8 AM 11:10
Clerk of Court
DORCHESTER COUNTY

☒ PLAINTIFF ☐ DEFENDANT

(NAME OF ATTORNEY) Michael P. O'Connell

(ADDRESS) 145 King Street, Suite 410, Charleston, SC 29401

(PHONE) (843) 577-9890

(FAX) (843) 577-9826

S.C. Bar No. 4620

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I, II, and III)☐ FORM MOTION, NO HEARING REQUESTED (Complete SECTIONS I and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Amend Petition a Fifth Time Court Reporter Needed? ☒ Yes ☐ No

Estimated Time Needed: 30 minutes

Court Interpreter Needed? ☐ Yes ☐ No

Conflict Dates: Please call in the event a hearing needs to be set for conflict dates.

SECTION II: Motion Type

☒ Written motion attached☐ Form Motion

COPY OF THIS REQUEST MUST BE SENT TO OPPOSING ATTORNEY PRIOR TO MAILING TO THE SCHEDULING CLERK BY REQUESTING ATTORNEY. OPPOSING ATTORNEY MUST RESPOND IMMEDIATELY TO REQUESTING ATTORNEY IF THE ESTIMATED TIME REQUESTED IS INADEQUATE SO THAT THE PROPER AMOUNT OF TIME CAN BE REQUESTED AND OF CONFLICT DATES.

I hereby certify that I have complied with Rule 11, SCRCP. I certify that this case is not over 270 days old or it has been restored by order of the court.

Michael P. O'Connell
Signature of Attorney for Plaintiff/Defendant Date Submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: _____☒ EXEMPT: ☐ Rule to Show Cause (Child and Spousal Support)☐ State Agency v. Indigent Party(Check Reason) ☐ Domestic Abuse or Abuse and Neglect☐ Motion for Stay in Bankruptcy☐ Indigent Status☐ Motion for Publication☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☒ Other: This is a PCR case that our office was appointed on.

JUDGE'S SECTION

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

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

JOHN E. WEIK,)

Petitioner/ Applicant.)

vs.)

JON OZMINT
COMMISSIONER OF THE SOUTH
CAROLINA DEPARTMENT OF CORRECTIONS)
AND THE STATE OF SOUTH CAROLINA)

Respondents.)

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO: 2003-CP-18-1070APPLICANT'S
MOTION TO
AMEND HIS PETITION
A FIFTH TIMECLERK OF COURT
DORCHESTER COUNTY
2007 FEB -8 AM 11:10
CERTIFIED COPY

Comes now the Applicant through his attorneys and moves this Court pursuant to SCRC15(a) or in the alternative 15(b) for an Order allowing him to Amend his Petition for a fifth time¹ by adding the following ground for relief:

The Applicant was denied effective assistance of counsel at the penalty phase because trial counsel did not object to a portion of the Solicitor's cross-examination of Applicant's expert Dr. Augustus Rodger, Ph.D. and to the Solicitor's closing argument as follows: during cross-examination, Dr. Rodgers admitted that the S.C. prisons where Applicant would be imprisoned if he received a life sentence have: crafts available for prisoners; jobs for which prisoners are sometimes paid; canteens where prisoners could buy soft drinks, candy bars, popcorn and other items with the money they earn in prison; job training; educational opportunities for prisoners to get their GEDs and to take college courses; recreational facilities available for prisoners; "three square meals" per day; free clothing and shoes; free medical care; radios and televisions. (Trans. p. 1944-1954) The Solicitor argued in closing argument that the jury should consider the fact that the Applicant would have a job in prison, get paid, have a canteen where he could buy soft drinks and candy and have a TV as reasons and compared the Applicant's life in prison to the decedent who was dead and in her grave. (Trans. p. 2135-2136). This evidence adduced during the cross-examination of Dr. Rodgers and the Solicitor's argument injected arbitrary factors into the jury's sentencing considerations in violation of S.C. Code Section 16-3-25(C)(1). "When the jury is invited to speculate about irrelevant matters upon which a death sentence may be based, § 16-3-25(C)(1) is violated." *State v. Burkhardt* __ S.E.2d __, 2007 WL 80036 decided on January 8, 2007. When an

¹ At the conclusion of the testimony, Applicant moved to amend a fourth time to add claims about ineffective assistance provided by trial counsel during jury selection. The Respondents did not object.

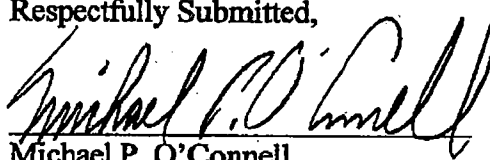
arbitrary factor is injected into the jury sentencing consideration, reversal is required.

This proposed Amendment is based on recent South Carolina Supreme Court case of *State v. Burkhardt* __ S.E.2d __, 2007 WL 80036 decided on January 8, 2007.

Amendments to pleadings pursuant to SCRPC 15(a) are to be "freely given when justice so requires and does not prejudice any other party." "[t]he opposing party has the burden of establishing prejudice." *Twelfth RMA Partners, L.P. v. National Safe Corp.*, 335 S.C. 635, 518 S.E.2d 44, 47 (Ct.App. 1999); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct.App. 1998). The Respondents cannot show prejudice. This evidence supporting this claim is in the transcript of the 1999 trial and no other evidence is needed to support it. At the beginning of the PCR hearing on September 18, 2006, the Court advised both parties that the entire record from the 1999 trial would be part of the record for the PCR. Both parties through their lawyers agreed.

In the alternative, the Applicant moves this Court for an order pursuant to SCRPC 15(b) to amend his Petition to conform to the evidence. When the Court advised that the entire record of the 1999 proceedings would be a part of the record for the PCR and neither party objected, the evidence supporting this claim became a part of this record and this issue was tried by the consent of the Respondent.

Respectfully Submitted,



Michael P. O'Connell
Stirling & O'Connell
PO Box 882
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843-577-9890 phone

February 6, 2007

843-577-9826 facsimile

Melissa J. Kimbrough
1811 Pickens St.
Columbia, SC 29401

ATTORNEYS FOR THE APPLICANT

Charles Beckman
CLERK OF COURT
DORCHESTER COUNTY
2001 FEB - 8 AM 11:10
CERTIFIED COPY

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☐ handing counsel a copy thereof
- ☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 6th of February 20 07
STIRLING, ILL. PA.

BY

Diana Russell Dodds

Ground 9(*)

Trial counsel was ineffective in failing to adequately voir dire potential jurors, and failing to object to the qualification of jurors who were automatically in favor of capital punishment for defendants convicted of an intentional homicide and/or unable to give due consideration to evidence in mitigation.

Applicant alleges that trial counsel was ineffective in failing to adequately conduct voir dire and move to strike for cause those jurors automatically in favor of capital punishment for defendants convicted of murder and/or unable to give due consideration to evidence in mitigation. Specifically, Applicant alleges counsel was ineffective in failing to adequately voir dire and challenge for cause the following jurors: Douglas Judy (#174), William Matthews (#204), Michael Black (#34), and Daniel Owens (#239). As a result of failing to move to excuse for cause the aforementioned jurors, trial counsel was unable to strike the following jurors: Douglas Judy (#174), Jerry Bryan (#48), and Marvin Ladson (#183), all of whom served on Applicant's jury.

This Court finds as a fact that juror number 174, Douglas Judy, remarked that he would impose death for an intentional killing, and that if "he's found completely guilty of it he deserves the death penalty." (Tr. P. 562, lines 2-8). He also stated that "[i]f someone has killed someone over an argument or something, it wasn't really meant to happen but it did, well, that's [a] life sentence to me." (Tr. P. 569; lines 16-18). When defense counsel inquired whether a killing "without any reason" necessitated a death sentence, Mr. Judy replied "[w]ell, I mean, if it was proven, you know, that there was no doubt in my mind that he did do it and I knew he did it with the evidence, it depends on the circumstances, you know whether to give him life or death." (Tr. P. 562, lines 22-25).

Juror number 204, William Matthews, was questioned only very briefly.

Nonetheless, when asked his opinion about the death penalty, he responded that "...I would have to hear the facts and all. And if I felt like he committed it and he did it and, you know, was guilty of the crime, I would vote for it." (Tr. P. 1001, lines 1-9). Mr. Matthews said he had "always felt the same way I feel now." (Tr. P. 1002, lines 3-6). Defense counsel then went on to rehabilitate Mr. Williams by asking him if he would weigh all the factors, which the juror agreed to do. (Tr. P. 1003, lines 3-9).

Juror number 34, Michael Black, informed the Court "I favor the death penalty if he's guilty of it." (Tr. P. 1022, lines 14-15). The Court then asked "[w]hen you say he's guilty of it, you mean if he's guilty of the crime?," to which Mr. Black responded "Yes, sir." (Tr. P. 1022, lines 16-18). The Court rehabilitated the juror by asking him if he would consider all factors, which he agreed he would do. (Tr. P. 1025-1027). On examination by defense counsel, the juror indicated he was "old school," but did not elaborate on what he meant other than to say "you're innocent until proven guilty." Defense counsel failed to conduct any follow-up, and the juror was qualified.

Juror number 239, Daniel Owens, stated he was in the "first paragraph," meaning death for everyone "[i]f murder is proven." (Tr. P. 1064, lines 13-19). Mr. Owens appeared to fully understand the concept of murder, as opposed to lesser degrees of homicide, when he informed the Court "[i]t seems to me there's always a circumstance of aggravation or else we'd be going for manslaughter or a lesser charge." (Tr. P. 1064, lines 19-22). Juror Owens stated that, in cases of murder, he would vote for death "unless there's some real extenuating circumstances." (Tr. P. 1066, lines 7-13). The trial court rehabilitated the juror, who said he would consider all the facts.

Defense counsel did little to follow-up on Mr. Owens' clear predisposition to

impose death in all cases of intentional homicide. He did, however, elicit the fact that Mr. Owens was inclined toward imposing a death sentence in cases of murder. (Tr. P. 1071, lines 13-19). Defense counsel, seemingly unwittingly, rehabilitated Mr. Owens by asking him if he would always give the death penalty, to which Mr. Owens replied “[n]o, sir.” (Tr. P. 1071, lines 20-22).

Ultimately, Douglas Judy, whose voir dire is detailed above, along with Marvin Ladson and Jerry Bryan, whom jury consultant Jeff Bloom indicated were unfavorable to the defense, were seated jurors at Applicant’s trial. This Court has carefully reviewed the responses on voir dire given by juror number 183, Jerry Bryan, from whom counsel elicited almost no information other than the fact that he was a career military man. As for juror Marvin Ladson, this Court also finds that defense counsel elicited no information of substance from him, other than to establish that he, too, had been in the military.

This Court has carefully reviewed and considered the case-law relevant to the question of whether an individual potential juror is qualified to serve in a capital case. The United States Supreme Court has ruled that the relevant standard is whether a juror’s views would “prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and oath.” *Wainwright v. Witt*, 469 U.S. 412 (1985) (citing *Adams v. Texas*, 448 U.S. 38, 45 (1980)). A juror’s bias need not be shown with “unmistakable clarity.” *Id.* A juror who would automatically vote to impose a sentence of death upon conviction for murder is not qualified to serve on a capital jury. *Morgan v. Illinois*, 504 U.S. 719 (1992).

William Matthews, Michael Black, Daniel Owens, and Douglas Judy were clearly

automatically willing to impose death for anyone convicted of murder. However, only one of these particular jurors, Douglas Judy, served on Applicant's jury. With respect to juror Judy, this Court finds that his responses indicated an unequivocal favoritism for capital punishment in cases of murder. The only definitive responses from Mr. Judy were those indicated that he would impose death when an intentional homicide had been proven. Given this fact, this Court must conclude that counsel was ineffective in failing to move to exclude him for cause. *Id.* Moreover, because defense counsel exercised all of his peremptory strikes and Douglas Judy actually served on Applicant's jury, this Court must conclude that the error was prejudicial, and that the Applicant is entitled to a new trial.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) COURT OF COMMON PLEAS
3) No. 03 CP 18 1070

4 JOHN E. WEIK,)
5 Petitioner-Applciant)
6 versus) TRANSCRIPT OF RECORD
7 SOUTH CAROLINA DEPARTMENT)
8 OF CORRECTIONS and)
9 STATE OF SOUTH CAROLINA)

Summerville, South Carolina
September 18/2, 2006

10

11 B E F O R E :

12 HONORABLE PERRY BUCKNER, Judge

13

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

15 For Petitioner: MICHAEL P. O'CONNELL, Esq.,
LISA KIMBROUGH, Esq.

16 For Respondents: DONALD J. ZELENKA, Esq.
17 Assistant Deputy Attorney
General

18 Reporter: ROBIN KEIL

19

20

21 HARRIET P. BENNETT
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23

24

25

I N D E X

	Direct-Redirect	Cross-Recross
1		
2		
3	ROBERT MINTER	
	By Mr. O'Connell	8-27
4	By Mr. Zelenka	14
5	RUSSELL CHRISTOPHER WEIK	
	By Mr. O'Connell	28-103
6	By Mr. Zelenka	80
7	DR. DONALD MORGAN	
	By Mr. O'Connell	105
8	By Mr. Zelenka	115
9	SCOTT PARKER	
	By Mr. O'Connell	118-138
10	By Mr. Zelenka	131-140
11	Questions of Applicant by the Court	142
12		
	AMY MAXWELL	
13	By Mr. O'Connell	144
	By Mr. Zelenka	160
14		
	MAGDALENE GUNTER	
15	By Mr. O'Connell	171
	No Cross Exam.	
16		
	RUSSELL WEIK	
17	By Mr. O'Connell	179-234
	By Mr. Zelenka	231
18		
	DR. DONNA SCHWARTZ WATTS	
19	By Ms. Kimbrough	237-292
	By Mr. Zelenka	276
20		
	DR. SEYMOUR HALLECK	
21	By Mr. O'Connell	295-339
	By Mr. Zelenka	325
22		
	JEFFREY BLOOM	
23	By Ms. Kimbrough	341-393
	By Mr. Zelenka	366-395
24		
25		

1 INDEX CONTINUED:

2 Direct-Redirect Cross-Recross

3 DR. PAMELA CRAWFORD

By Mr. Zelenka 397-459

4 By Mr. O'Connell 426

5- DR. AUGUSTUS RODGERS

By Ms. Kimbrough 465-513

6 By Mr. Zelenka 495

7 MARGARET O'SHEA

By Mr. O'Connell 515-542

8 By Mr. Zelenka 538

9 Stipulation 462

10 Disc. re depositions 544

11 Motions 547

12 PERCY BEAUFORD

By Mr. Zelenka 554-654

13 By Mr. O'Connell 598

14 MARVA HARDEE THOMAS

By Mr. Zelenka 662-739

15 By Ms. Kimbrough 704-741

16

17

18

19

20

21

22

23

24

25

1	EXHIBITS		For ID.	In EV.
2	For Plaintiff-Applicant:			
3	1	Minter document		13
4	2	Staffing report 5-13-99		111
5	3	Interview Lillie Weik		125
6	4	Interview Christopher Weik		125
7	5	Interview Russell Weik		125
8	6	Interview, Mr. and Mrs. Gunter		129
9	7	Form DD 214, 11 1 55		200
10	8	Russell Weik assignment list		-
11	9	Russell Weik 1966 clinical record		205
12	10	VA letter of 9 19 06		211
13	11	Physician's Orders 9 28 98		255
14	12	Jail records		463
15	13	Chronology	473	493
16	14	Genogram	475	494
17	15	Klocek affidavit		546
18	16	Edwin Weik affidvit		546
19	17	Order of Appointment of counsel		603
20	18	Rickborn correspondence		608
21	19	Defense of Indigents Act		705
22				
23				
24				
25				

1	EXHIBITS CONTINUED:		
2		For ID	In EV
3	For Respondent :		
4	1 Minter invoice		15
5	2 List of investigative tasks		16
6	3 Dr. Morgan invoice		
7	4 B. J. Johns Invoice		132
8	5 Question checklist		370
9	6 Rating system		
10	7 Batson reasons		381
11	8 Bloom sentencing phase information		383
12			
13	9 Forensic report, Dr. Crawford		400
14	10 Psychological Evaluation		406
15	11 Medical records, 4 30 99 / 5 7 99		408
16	12 Medical records, 9 28 98/ 10 1 98		408.
17	13 Dr. Rodgers invoice		497
18	14 Percy Beauford Invoice		557
19	15 Rickborn letter 4 29 99		565
20	16/17 no exhibits		
21	18 2 19 99 letter		671
22	19 2 19 99 letter		672
23	20 3 2 99 letter		673
24	21 Undated letter to Springs		675
25	22 Undated letter to Minter		676

1 EXHIBITS CONTINUED:

2		For ID.	In Ev.
3	23 Letter to Dr. Schwartz Watts		680
4	24 Letter to Mr. Brandon		680
5	25 Letter to Dr. McKee		681
6	26 Letter to Ms. Rickborn		682
7	27 4 12 99 letter		683
8	28 8 17 98 letter		685
9	29 4 19 99 letter		686
10	30 4 26 99 letter		688
11	31 4 26 99 letter		689
12	32 5 6 99 Memo		691
13	33 5 7 99 letter		694
14	34 Exparte affidavit of investigator		695
15	35 5 14 99 letter		698

16

17

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1 (The within matter came before the Court on September
2 18, 2006)

3 THE COURT: Thank you. Good morning, and please be
4 seated.

5 We need to bring in the Applicant.

6 Are you and your client ready to proceed?

7 MR. ZELENKA: The State's ready, Your Honor.

8 THE COURT: Is the Applicant ready?

9 MR. O'CONNELL: We are, Your Honor.

10 THE COURT: Very well. Let the record reflect that
11 this is the matter of John E. Weik, W E I K, the
12 Petitioner/Applicant, versus the South Carolina Depart-
13 ment of Corrections and the State of South Carolina.

14 I would ask that counsel identify themselves, whom
15 they represent in the matter, beginning with counsel for
16 the Applicant.

17 MR. O'CONNELL: Your Honor, I'm Michael Patrick
18 O'Connell, and I practice law in Charleston. I repre-
19 sent the Applicant, John Weik.

20 MS. KIMBROUGH: Your Honor, I'm Lisa Kimbrough, and
21 I practice law in Columbia, South Carolina. I am Co-
22 counsel for Mr. Weik.

23 THE COURT: Let the record reflect also that the
24 Applicant is present in the Courtroom, Mr. John E. Weik.

25 MR. ZELENKA: Your Honor, I am Donald James

1 Zelenka. I am Assistant Deputy Attorney General of the
2 State Attorney General's Office. I'm representing the
3 Respondent, State of South Carolina.

4 THE COURT: Very well, counsel. Let the record re-
5 flect that prior to starting this morning I had a short
6 pre-trial conference just for timing purposes with coun-
7 sel for both sides in Chambers, to get some idea of the
8 time that would be necessary in order to put up the evi-
9 dence and testimony from both sides so that I could so
10 advise the Clerk of Court who has inquired of me this
11 morning.

12 I also was advised by counsel that they wish to
13 waive an opening statement, both sides, and proceed on
14 directly with testimony.

15 I was advised by counsel they were proceeding on the
16 second amended application for post conviction relief,
17 which is filed with the Clerk in Dorchester, dated Sep-
18 tember 5th, 2006, to which the Respondents
19 have filed their return.

20 I was also advised by counsel for both sides that
21 there are no pending motions or matters that need to be
22 heard before we move directly into the testimony in sup-
23 port of allegations in the pleadings.

24 Is that correct from the Applicant?

25 MR. O'CONNELL: Correct, Your Honor.

1 THE COURT: Is that correct from Respondent?

2 MR. ZELENKA: That's correct, except for one thing.

3 THE COURT: Yes, sir.

4 MR. ZELENKA: The return is to the amended applica-
5 tion, the first amended application. We haven't done a
6 return to the second amended application.

7 THE COURT: I thought you told me your return was
8 filed to the second amended application.

9 Are you ready to proceed even though you have not
10 filed a return to the second amended application because
11 you feel your return to the first one adequately addresses
12 your response to both?

13 MR. ZELENKA: That would be correct. We are ready
14 to proceed, Your Honor.

15 THE COURT: Very well. In that case, Mr. O'Connell,
16 it is my understanding from the Respondents that they
17 are ready to proceed.

18 The returns are the same in both the first and the
19 second application. All right.

20 Very well, Mr. O'Connell, we are ready to proceed.
21 You have waived opening, and you may call your first
22 witness.

23 MR. O'CONNELL: Robert Minter.

24 ROBERT MINTER, being duly sworn,
25 testified as follows:

1 THE COURT: Have a seat on the witness stand and
2 make your self comfortable.

3 I'd like for you to begin by stating your full name
4 and spelling your last name for my Court Reporter seated
5 below you.

6 WITNESS: Robert Lowe Minter, M I N T E R.

7 THE COURT: Your witness, counsel.

8 MR. O'CONNELL: Thank you.

9 DIRECT EXAMINATION

10 BY MR. O'CONNELL:

11 Q. Mr. Minter, what do you do for a living?

12 A. I'm a private investigator.

13 Q. And how long have you been a private investigator?

14 A. Since 1995.

15 Q. And are you licensed by SLED?

16 A. Yes, sir.

17 Q. Prior to 1995, not counting the brief time that
18 you did something else, what did you do before you be-
19 came a private investigator?

20 A. I was a Lieutenant with the Charleston County
21 Sheriff's Office.

22 Q. And did you retire from the Sheriff's Office?

23 A. Yes, sir.

24 Q. And did you at various times during your career with
25 the Sheriff's Office have investigative duties?

MR. MINTER ON DIRECT

1 A. Yes, sir, I did.

2 Q. On major criminal felonies?

3 A. Yes, sir.

4 Q. Were you retained in this case by the attorney that
5 represented -- not in this case, but in the trial of
6 Mr. Weik were you retained by the defense attorneys?

7 A. Yes, sir.

8 Q. And who was it that you had contact with? Who did
9 you talk to about being retained?

10 A. Marva Hardee Thomas.

11 Q. When you were retained, what was your understanding
12 of what they wanted you to do?

13 A. I was -- my understanding was that I was going to
14 do the criminal defense investigation in this case.

15 Q. And when do you think it was that you got hired?

16 A. It was around January of 1999.

17 Q. All right, sir. Did you ever get any more specific
18 instructions about what they wanted you to do in this
19 case?

20 A. We had periodic meetings, and there was times they
21 would give me -- I say they -- R. C. Buford was the
22 other attorney -- Marva Hardee Thomas would give me in-
23 structions to go interview witnesses or potential witnes-
24 ses.

25 Q. Did they give you any overall theme of what their
10

MR. MINTER ON DIRECT

1 case was, to assist you in your interviews?

2 A. No, they didn't.

3 Q. Do you know what a mitigation investigator is?

4 A. I do now, yes, sir.

5 Q. What is a mitigation investigator, as you understand
6 it?

7 A. That's a person that goes into the client's family
8 life and history and to try to determine through the
9 years over his school teachers and so forth that they --
10 if he had anything traumatic in his life that caused him
11 to do whatever he's accused of doing.

12 Q. Okay. Are you a mitigation investigator?

13 A. No, sir.

14 Q. Were you asked to be a mitigation investigator in
15 this case?

16 A. No, sir.

17 Q. Have you ever tried to be a mitigation investiga-
18 tor?

19 A. No.

20 Q. In front of you is a series of documents that are
21 marked -- the Court Reporter has them marked Plaintiff's
22 but they are Petitioner's throughout . .

23 THE COURT: For the purpose of the Court Reporter not
24 having to change stickers, the Plaintiff's Exhibits re-
25 ferred to are Petitioner-Applicant's Exhibits.

MR. MINTER ON DIRECT

1 Do you agree?

2 MR. O'CONNELL: Yes, sir.

3 MR. ZELENKA: Yes, sir.

4 THE COURT: Do you have any objection to him offer-
5 ing them in evidence after he has them identified?

6 Have you seen them, Mr. Zelenka?

7 MR. ZELENKA: I believe that he has provided me
8 with a copy of them.

9 THE COURT: Make sure he has it and has no objec-
10 tion before you publish it.

11 All right, go ahead, counselor.

12 BY MR. O'CONNELL:

13 Q. I show you what has been marked Plaintiff's Exhi-
14 bit 1. Do you recognize those documents?

15 A. Yes, sir.

16 Q. And would you explain to the Judge what they are?

17 A. The documents that I either faxed or mailed to Mr.
18 Buford and Marva Hardee Thomas as I progressed in the
19 investigation.

20 Q. And you supplied those -- the last related document
21 you have there, dated May 11, 1999 -- the latest document
22 produced is May 11th, and then they go back to the first
23 document?

24 A. Yes, sir.

25 Q. All right. Very good. They are chronological --

MR. MINTER ON DIRECT

1 they start May 11th and the last document in the series
2 is February 3rd.

3 A. Yes, sir.

4 Q. And those were all given to -- were they all given
5 to the attorneys, Ms. Hardee Thomas or Mr. Buford, as
6 they were produced by you?

7 A. Yes. I faxed to both of them those documents, and
8 I believe I hand-delivered originals.

9 Q. All right. If you would go to the seventh page
10 . . .

11 THE COURT: Before we publish, let me ask you this.
12 Is there no objection to these documents?

13 MR. ZELENKA: That's right, Your Honor. No objec-
14 tion.

15 THE COURT: You want to mark them as one exhibit?

16 MR. O'CONNELL: Yes, sir.

17 THE COURT: Exhibit 1 will be admitted in evidence
18 without objection, and that is Applicant's or Plaintiff's
19 Exhibit 1, entered in evidence.

20 (Minter documents admitted in evidence as Appli-
21 cant's Exhibit 1)

22 THE COURT: You may now publish, counsel.

23 BY MR. O'CONNELL:

24 Q. If you would refer to that document and read it.
25 It's a short document.

MR. MINTER ON DIRECT

1 A. Is this the one dated February 3rd of 1999?

2 Q. Yes, sir. It's a one paragraph . .

3 A. I met with three witnesses . .

4 Q. Yes, sir.

5 A. I have met with three of the witnesses you asked
6 me to interview, and you can see they really don't have
7 anything to hang your hat on in his defense, but I
8 think would make an excellent character witness. I will
9 continue on the list you gave me. If there is anything
10 you need to pass on, just beep me, and my beeper number
11 at that time.

12 Q. All right. Look at the first page, May 11th. Are
13 those among the people you interviewed during the course
14 of your investigation?

15 A. Yes, sir.

16 Q. All right, and this was all, of course, supplied
17 to defense counsel?

18 A. Yes, sir.

19 Q. Would you please answer any questions counsel may
20 have.

21 THE COURT: Cross examination.

22 MR. ZELENKA: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. ZELENKA:

25 Q. Mr. Minter, do you have your logs with you?

MR. MINTER ON DIRECT

1 A. My file?

2 Q. Yes.

3 A. No, sir.

4 Q. Okay. Let me ask you if you can identify this docu-
5 ment for me, please, and I'll show it to counsel.

6 A. . .

7 Q. Can you identify these two sets of documents,
8 please?

9 A. Yes.

10 Q. What's the first one?

11 A. It's a bill that I submitted for investigation in
12 this case.

13 Q. All right.

14 MR. ZELENKA: Your Honor, we would move to intro-
15 duce this as Respondent's Exhibit 1.

16 THE COURT: Any objection?

17 MR. O'CONNELL: No, sir.

18 THE COURT: State's Exhibit 1 or Respondent's Ex-
19 hibit Number 1 will be admitted into evidence without
20 objection. Respondent's Number 1 in evidence.

21 You may publish.

22 (Minter bill admitted in evidence as respondent's
23 Exhibit 1)

24 BY MR. ZELENKA:

25 Q. I hand you back Respondent's Exhibit Number 1,

MR. MINTER ON CROSS

1 and ask you how many hours that reflects that you spent
2 on the case?

3 A. A hundred sixteen.

4 Q. Let me ask you to identify the other documents,
5 which you have.

6 A. That is the itemized task that I performed in this

7 . .

8 MR. ZELENKA: Your Honor, we would move to admit
9 this exhibit.

10 THE COURT: Any objection?

11 MR. O'CONNELL: No, sir.

12 THE COURT: State's Exhibit or Respondent's Exhibit
13 Number 2 will be admitted into evidence without objec-
14 tion. Respondent's 2 in evidence.

15 You may publish.

16 (Task itemization admitted without objection in
17 evidence as Respondent's Exhibit 2)

18 BY MR. ZELENKA:

19 Q. Okay, Mr. Minter. Reviewing that document, briefly
20 give a summary to the best of your recollection as to
21 what you particularly did in the case?

22 A. Okay.

23 A. When you began and when you ended.

24 A. I began around January of '99, and ended May 27th
25 of 1999.

MR. MINTER ON CROSS

1 Q. What was the first matter you dealt with in this
2 case?

3 A. I picked up copies of the case file from Attorney
4 Marva Hardee Thomas.

5 Q. And that was on January 29th?

6 A. Yes, sir.

7 Q. And what was the second matter that you did?

8 A. Reviewed the case file.

9 Q. And that was the case file that was provided to
10 you by Ms. Hardee Thomas?

11 A. Yes, sir.

12 Q. Then how much time did you spend on that, if you
13 can recall?

14 A. I put here four hours.

15 Q. Okay. What is the next matter you did in prepara-
16 tion for this investigation?

17 A. I interviewed a Pastor Dupre and met with Irving
18 Bonner and interviewed him, and Bernie Alston and in-
19 terviewed her.

20 I typed up the report and faxed copies to Attorneys
21 Buford and Thomas.

22 Q. What date was that done?

23 A. February 2nd.

24 Q. Okay, and those are the documents that you pro-
25 vided to them on February 3rd or are they different

MR. MINTER ON CROSS

1 documents?

2 A. . .

3 Q. Let me show you this document for you to refresh
4 your recollection.

5 A. I don't understand your question.

6 Q. I'm sorry. I'll be more specific.

7 In Plaintiff's Exhibit Number 1, it has items
8 marked February 3rd. These are all dated February 3rd
9 in the back.

10 You stated those matter were typed up on February
11 2nd?

12 A. . .

13 Q. I'm just trying to clarify?

14 A. Yes.

15 Q. What was the next matter you did in this investi-
16 gation?

17 A. February 9th, contacted Bruce Scott, Tammy Geddis,
18 James Rayburn, . .

19 THE COURT: Spell the last name for the Court Re-
20 porter, please.

21 WITNESS: Tammy Geddis, G E D D I S.

22 A. James Rayburn, Donald Norris by phone to set up
23 appointments to speak with them.

24 Q. Okay, and what is the next matter you did in prep-
25 aration?

18 (2nd of 10 pages) (3rd of 10 pages) (4th of 10 pages) (5th of 10 pages)

MR. MINTER ON CROSS

1 A. Contacted Bruce Scott --- excuse me -- met with
2 Pastor Bruce Scott at the church in Moncks Corner --
3 interviewed him.

4 Q. Do you recall what the purpose of that interview
5 was?

6 A. I don't remember what our conversation was. I know
7 it was about Mr. Weik because he was a member of that
8 church.

9 Q. Okay. Was it to get an understanding of his back-
10 ground?

11 A. I don't know. I don't remember.

12 Q. What was the next matter you did and when was that?

13 A. February 29th, met with Powton Huggins, H U G G
14 I N S -- interviewed him.

15 Q. Okay. Let me ask you to refer to Plaintiff's Ex-
16 hibit Number 1, the matter dated February 24th, 1999.
17 I ask if that refreshes your recollection about your
18 interview with Mr. Scott?

19 A. Yes, sir.

20 Q. And having reviewed that, what do you recall about
21 the interview with Mr. Scott?

22 A. I remember him talking about a dream that Mr. Weik
23 had had and then basically it was just -- he was talk-
24 ing about -- we talked about him being a member of the
25 church and participating in the church.

MR. MINTER ON CROSS

1 Q. Okay. What was the next matter then in the inves-
2 tigation?

3 A. I met with Powton Higgins or Huggins.

4 Q. And when was that?

5 A. February 29th.

6 Q. Of 1999?

7 A. Yes, sir.

8 Q. And what was the next matter you did, if you can
9 recall?

10 A. March first, 1999.

11 Q. All right.

12 A. I went to Broyhill where Mr. Weik had previously
13 worked and spoke with the personnel manager there.

14 Q. Okay, and what was the next matter that you did?
15 Did you pick up any material from Glory Hill?

16 A. I apparently went and got a subpoena and came back
17 to Broyhill and served a subpoena for the personnel re-
18 cords.

19 Q. Okay, and what next did you do?

20 A. I met with Karen Spilane at Knightsville
21 School. That was March 24th, 1999.

22 Q. And that school was the school where his son went?

23 A. Yes, sir.

24 Q. Okay, what was the next function you did for his
25 defense?

MR. MINTER ON CROSS

1 A. March 11, 1999, met with Attorney Thomas, Buford,
2 and Investigator Rick Barnes of the Dorchester County
3 Sheriff's Office, to review evidence and scene photos
4 in this case.

5 Q. And what . . .

6 A. Then we met with the client afterwards.

7 Q. Okay, and what day was that again?

8 A. March 11, 1999.

9 Q. Okay, and how long was your meeting at the Sheriff's
10 Department?

11 A. I don't really remember. It was probably a couple
12 of hours.

13 We went through the evidence and photographs and
14 so forth.

15 Q. Okay, and was this the first time you had met with
16 the party, Mr. Weik?

17 A. I believe so.

18 Q. Okay. What was your next meeting? I mean, your
19 next function?

20 A. On March 11th, 1999, I met with Attorney
21 Thomas in Beaufort at Attorney Thomas' Office, and we
22 met with Solicitor Bailey at his office.

23 Q. Okay. How long were those meetings?

24 A. It was about four hours.

25 21

MR. MINTER ON CROSS

1 Q. What was your next function?

2 A. On May 3rd, I interviewed a Gloria Varner and pre-
3 pared a report.

4 Q. Do you recall who Ms. Varner was?

5 A. No, I don't.

6 THE COURT: Refer to the exhibit number for the
7 record.

8 BY MR. ZELENKA:

9 Q. I refer you to Plaintiff's Exhibit Number 1, the
10 last page of that exhibit, and ask you if you can re-
11 call if that is the report you made on that, or is that
12 a different report?

13 A. I talked to her but I don't remember it. This is
14 my report.

15 Q. Okay. Let me ask you again to refer to Respondent's
16 Exhibit Number 2. May 3rd, 1999, interview with Gloria
17 Varner. Prepared a report, one hour.

18 Was that interview by telephone?

19 A. Yes.

20 Q. What was the next function that you did?

21 A. Went to St. George and made a photocopy of the jury
22 questionnaires. Delivered them back to Attorney Thomas.

23 Q. Okay, and then what was your next function?

24 A. Met with Attorney Thomas in Beaufort at Attorney
25 Thomas' office to meet Investigator Parker, and we then

MR. MINTER ON CROSS

1 drove -- I drove to Kingstree to Circuit Court Judge
2 Shuler's Office to get a Court Order signed for the
3 State Hospital records.

4 Then drove to Columbia to serve the Court Order
5 and returned to St. George to Clerk to clock it in, the
6 Order.

7 Q. Okay, who is Investigator Parker?

8 A. I don't remember.

9 Q. What was your next function?

10 A. On May 9th, 1999, I met with Abraham Rodriguez at
11 his residence and interviewed him.

12 Q. Okay. Did you do a report on that -- on your talk
13 with him? Do you recall?

14 A. I think I did, yes, sir.

15 Q. Okay, let me ask you to refer again to Plaintiff's
16 Number 11, page two.

17 A. Yes, sir.

18 Q. That's the report dated May 9, 1999?

19 A. Yes, sir.

20 Q. And is that the report that you prepared at that
21 time?

22 A. Yes, sir.

23 Q. Okay. What was your next job function?

24 A. May 11th, contacted potential witnesses by phone
25 and typed up potential witness list for Solicitor.

MR. MINTER ON CROSS

1 Q. Okay, and what was your next job function?

2 A. On the 20th met with Attorney Thomas at her office
3 -- this was 1999 -- picked up subpoenas for potential
4 witnesses and served subpoenas and prepared affidavits
5 for service.

6 Q. Okay.

7 A. On May 24, 1999, I was present here when they started
8 the Court, and then the 25th, 26th and 27th, I was pre-
9 sent for Court.

10 I don't think I was -- I wasn't here for the trial.

11 Q. Okay. Now, in your dealings with the defense attorneys,
12 Mr. Buford and Ms. Hardee Thomas, who were most of your
13 dealings with?

14 A. With Percy Buford.

15 Q. Mr. Buford?

16 A. Yes.

17 Q. When you met with Mr. Buford after doing these in-
18 terviews, did you specifically go over the interviews
19 with him, or did you just hand him the documents, if you
20 recall?

21 A. Probably just faxed them to him and if he had any
22 questions he would call me.

23 Q. Okay. In any of your discussions when you had both
24 of the defense lawyers present, did you talk about the
25 crime itself?

MR. MINTER ON CROSS

1 A. . . .

2 Q. What defenses may be available or what the Defen-
3 dant's version of the case was?

4 A. We never -- as I recall, we never actually dis-
5 cussed where they were headed with the defense. They
6 would give me names of people to interview or who they
7 thought needed to be interviewed, and I would go on and
8 they would stay there and they would meet.

9 Q. Okay. Did they give you directions on what the
10 interviews were supposed to be about; other than just
11 John Weik?

12 A. No.

13 Q. Okay. You have experience as an investigator with
14 the Charleston County Sheriff's Department?

15 A. Yes, sir.

16 Q. Do you have an understanding of the circumstances
17 of this particular crime, who the victim was, that it
18 evolved out of a sort of domestic-type situation?

19 Is that correct?

20 A. Yes, sir.

21 Q. So you did have some general background. Correct?

22 A. Yes, sir.

23 Q. And you had also reviewed the case file for some
24 four hours initially after you became involved in the
25 case. Isn't that correct?

MR. MINTER ON CROSS

1 A. Yes.

2 Q. So you had some understanding of the focus that
3 they were asking you to do in interviewing these parti-
4 cular witnesses -- sort of where it was headed. Isn't
5 that correct?

6 A. I had my own idea where it was heading, yes, sir.

7 Q. And do you recall what your own idea was back in
8 1999?

9 A. I recall that I thought that the burglary part of
10 this case was rather weak, and I couldn't understand why
11 they were going for the death penalty under these circum-
12 stances.

13 It was really just a domestic situation, I thought,
14 and I went -- as I recall, I went to the house, to the
15 trailer, I believe it was, to photograph that.

16 I think that I -- I don't remember if someone was
17 with me or not.

18 Q. Okay.

19 A. But I just -- you know, I kind of got a picture
20 of it in my mind, of what happened.

21 Q. And you shared your belief that the burglary issue
22 was a weak issue with defense counsel?

23 A. Yes, sir, I did.

24 Q. I don't believe I have any further questions of
25 this witness.

MR. MINTER ON CROSS

1 Thank you, sir.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. O'CONNELL:

5 Q. The Attorney General asked if you have your file.

6 Do you still have a file?

7 A. No, sir. SLED requires us to keep the file for
8 three years, and I've done a lot of domestic and so
9 forth cases, and I just don't have the room to keep them,
10 so I just destroy them.

11 Q. Okay, thank you. Nothing further.

12 THE COURT: Recross, limited to redirect.

13 MR. ZELENKA: Nothing, Your Honor.

14 THE COURT: As to the witness, counsel, may he be
15 excused?

16 MR. O'CONNELL: Yes, sir.

17 THE COURT: Any objection to this witness being
18 excused?

19 MR. ZELENKA: No, sir.

20 THE COURT: You may step down and be excused. Make
21 sure the Court Reporter has all three of the exhibits
22 that were admitted.

23 (Witness excused)

24 THE COURT: Thank you. Call your next witness.

25 MR. O'CONNELL: Mr. Weik.

1 RUSSELL C. WEIK, being duly sworn,
2 testified as follows:

3 THE COURT: Have a seat on the witness stand, if
4 you would, please. If you will speak into the micro-
5 phone so it will amplify your voice and my Court Reporter
6 will be able to hear, as well as the parties and the
7 attorneys.

8 If you will begin, sir, by please giving us your
9 full name and spelling your last name.

10 MR. WEIK: Russell Christopher Weik, W E I K.

11 DIRECT EXAMINATION

12 BY MR. O'CONNELL:

13 Q. Mr. Weik, how are you related to the -- to my
14 client, John Weik?

15 A. I'm his younger brother.

16 Q. And how much age is there between you?

17 A. Approximately twelve and a half months.

18 Q. And who are your parents?

19 A. Russell Weik and Louise Varner Weik.

20 Q. Your mother died after this trial in 1999?

21 A. My mother died in the year 2002. In February of
22 2002.

23 Q. And your father is still living?

24 A. Yes, sir.

25 Q. Did you testify at your brother's trial in 1999?

MR. R. WEIK ON DIRECT

1 A. No, sir.

2 Q. Were you subpoenaed as a witness?

3 A. Yes, sir.

4 Q. And who subpoenaed you as a witness?

5 A. I have no idea who the man was. I just got a knock
6 at the door -- are your Russell Christopher Weik, and I
7 said, yes, sir, and he handed me a paper.

8 Q. I'm sorry. That wasn't a very good question.

9 You were subpoenaed by his defense lawyers?

10 A. Percy Buford.

11 Q. Okay. Did you talk to Mr. Buford or did he talk
12 to you rather about what he was going to ask you, if
13 you became a witness at the trial?

14 A. No, sir.

15 Q. Did you ever talk to him about anything that you
16 had told the private investigator?

17 A. No, sir. The only time I got to talk to him was
18 after the trial, the -- one of the trials when the case
19 was over.

20 I went to Court twice and the first day I was
21 there I stayed all day and we met outside in the lobby,
22 and I asked him when I would be before the Court, and
23 he said, you're not; the case is over; your brother has
24 done pled.

25 Q. I'm sorry. Would you say that again?

MR. R. WEIK ON DIRECT

1 A. He said, you're not; the case is done over; your
2 brother has pled guilty.

3 Q. Okay. Aside from that contact, was there any other
4 contact with Mr. Buford or the other lawyer, Ms. Hardee
5 Thomas, about what you were going to testify to or what
6 you might testify to?

7 A. No, sir.

8 Q. Where were you and your brother raised?

9 A. We were raised on the Horseshoe Road in Moncks
10 Corner, the old home my mother had inherited from her
11 first husband.

12 Q. And your mother had a previous marriage?

13 A. Yes, sir.

14 Q. And how many children did she have from that mar-
15 riage?

16 A. She had four. Two sons and two daughters.

17 Q. And what happened to her first husband?

18 A. He died of a heart attack.

19 Q. And after he died, then she later married your
20 father?

21 A. Yes. To my understanding.

22 Q. Who is the oldest of -- how many children did your
23 mother have with your father?

24 A. With my father?

25 Q. Yes, sir.

MR. R. WEIK ON DIRECT

1 A. John Edwin, myself and my sister, Amy Jeannine.

2 Q. So is he referred to sometimes as Edwin? Eddy?

3 A. Yes, sir.

4 Q. And Eddy is the oldest of your father and mother's
5 children?

6 A. Yes.

7 Q. And then you and then Amy?

8 A. Yes.

9 Q. How much younger is Amy than you?

10 A. Amy is three years younger than I.

11 Q. You have some jewelry on this morning that looks
12 to me to be Native American. Is that correct?

13 A. Yes, sir.

14 Q. All right. Do you have a Native American heri-
15 tage?

16 A. Yes, sir.

17 Q. And on which side of your family?

18 A. On my mother's side is where we have the predomi-
19 nant line of Native American heritage.

20 Q. Was your mother -- I'm not sure I'm using the right
21 verbage -- was she pure Native American?

22 A. She is more like three-quarters Native American,
23 and the rest Irish, and from doing a history on it she
24 was some black.

25 Q. Did your father have any Native American heritage?

MR. R. WEIK ON DIRECT

1 A. He claims some, and my aunts, his sisters, told me
2 they were. I haven't -- from doing the research, I have
3 not found any.

4 Q. Where were you raised, your brother Eddy and your
5 sister?

6 A. We were all raised there at the home off of 17 A,
7 eighty miles out of Moncks Corner.

8 Q. And the first thing I want to talk about is what
9 Eddy was like as a young child. You are younger, you
10 say, but I'd like for you to describe what Eddy was as
11 a young child when you first started noticing your bro-
12 ther?

13 A. When I was younger, Eddy would learn little songs
14 off the radio or television and he would try to teach
15 them to me.

16 Then eventually he went off to school, to kinder-
17 garten, and he would come back and tell me the things that
18 he had learned in school, which is irrelevant if you
19 think about it, because basically it was games and
20 things, and I used to think that was so cool and I could
21 not wait to go to school.

22 So as I got in school, I had to learn the same
23 things Eddy had, but Eddy always acted like he knew
24 more than me. I didn't know anything.

25 So as time progressed, Eddy would go to these special

MR. R. WEIK ON DIRECT

1 classes in the trailers back behind the school.

2 Q. Why was that?

3 A. Because they were moving some of the classes, and
4 the kids that couldn't keep ^{up} would slow the class down,
5 so they put them in trailers to learn.

6 Q. And that is what happened to Eddy?

7 A. Yes, Eddy was put in the IMF and the BRL classes.

8 Q. Do you remember that -- any difficulties that he
9 had learning . .

10 THE COURT: Just a moment. Tell us for the record
11 what IMF and BRL stand for, if you know.

12 WITNESS: Basic reading language skills and inter-
13 mediate math schools or initial math schools.

14 They are -- at that time, his skills were like two
15 or three years behind what his normal grade would be.

16 BY MR. O'CONNELL:

17 Q. Do you recall your brother becoming frustrated
18 with his inability to learn?

19 A. Yes.

20 Q. How did he act when he did that?

21 A. He would start crying. He would pout and throw
22 things down. He would take it out on things.

23 Q. All right. Do you remember how your mother dealt
24 with that? Dealt with Eddy's learning problems?

25 A. She would try to make him -- whenever he would get

MR. R. WEIK ON DIRECT

1 so frustrated and start crying, say I can't do it, she
2 would tell him to go out and play.

3 Q. With the learning problems Eddy had, does that per-
4 sist?

5 A. Yes.

6 Q. And at some point, did you recognize that you were
7 ahead of Eddy academically?

8 A. Yes. I would come home when my grades would be As,
9 Bs and Cs, and he would come home with Ss, Us, Fs, or
10 unsatisfactory marks. He never had As, Bs or Cs.

11 Q. All right, do you recall or remember a time when
12 you began to exceed his abilities?

13 A. Yes.

14 Q. All right.

15 A. That was a life insurance man that used to come
16 around and he would give out times-table cards, and momma
17 would test us off these times-table cards, and me and
18 my sister, we used to memorize them, and Eddy couldn't
19 memorize them.

20 And momma didn't mess with him, so we were always
21 constantly challenging each other on who knew the most
22 times-tables.

23 Q. How far did Eddy go to school?

24 A. Eddy got all the way to the eleventh grade.

25 Q. Are you aware of what his reading abilities are?

MR. R. WEIK ON DIRECT

1 A. To my knowledge, he couldn't read. He would like
2 take a sentence and pronounce it out, spell it out, like
3 the D O -- dog and . .

4 Q. When are you talking about?

5 A. The last time I saw Eddy.

6 Q. And when was that?

7 A. Back in 1998.

8 Q. Before he was arrested?

9 A. Yes.

10 Q. All right. I didn't mean to interrupt you, but I
11 just wanted to set that for the Judge.

12 A. To my knowledge, he couldn't read worth a darn then.

13 Q. Did you and Eddy work at the same place?

14 A. Yes, sir.

15 Q. Where was that?

16 A. Broyhill. Actually, let me think back because we
17 worked several places.

18 We worked a couple of times as teenagers on jobs.

19 Q. At Broyhill, what job did Eddy have?

20 A. He was a rib saw operator.

21 Q. And what shift did he work?

22 A. Night shift.

23 Q. Was it your understanding that he was placed in a
24 job at Broyhill because of his inability to read?

25 A. Yes, he was put on a job where the whole purpose

MR. R. WEIK ON DIRECT

1 was to cut wood up so it could be glued back together,
2 and it didn't have to be any particular thing -- it could
3 be close to measurement and that was good enough.

4 Q. And how did he do his job?

5 A. Eddy would mark things with crayons and things. He
6 had a tape measure and he would make little marks on the
7 machine, and then the people -- the next shift would
8 erase his marks and he'd get mad about that.

9 Q. Why?

10 A. I guess because he couldn't -- he didn't want to
11 mess up. He took his job pretty seriously.

12 Q. Was there a reason he began to work the second
13 shift at Broyhill?

14 A. Well, when he got hired, that was the shift that
15 was open, and I talked to the manager about it and told
16 him he was a hard worker and needed the money, and this
17 was right -- it happened right after Daniel was born
18 or right before Daniel was born.

19 Q. Who is Daniel?

20 A. Daniel is his supposedly son. I don't know if he
21 is his son or not.

22 Q. His mother is the lady who was killed?

23 A. Yes, sir.

24 Q. We were talking about why he was working the sec-
25 ond shift -- I just wanted the Judge to know who Daniel

MR. R. WEIK ON DIRECT

1 was -- he was working the second shift, and you said
2 that was what was open when he had come to work there?

3 A. Yes, sir.

4 Q. Did he like working that shift?

5 A. Yes, there was lots less people on that shift and no
6 managers. Well, he had a manager but he was more like
7 or less -- he didn't have the big managers who would
8 walk around the plant and demand more production.

9 Q. Why was it important for him to have fewer people
10 around him?

11 A. For Eddy, it was easier for him to do the job by
12 himself. Where we worked at, it was competition. If
13 you manned a machine and somebody could run it one part
14 more than you, you would lose the machine. They would
15 put another person on there if he did just one part
16 more.

17 There was a lot of competition at that plant, but
18 with Eddy on that shift there was no competition. No-
19 body wanted to run that gang rip saw. Eddy was over by
20 himself in his own little world.

21 Q. You said something about Eddy being in his own
22 little world -- was that something, a trait, that you
23 noticed in Eddy throughout his childhood and into his
24 adulthood?

25 A. Yes.

MR. R. WEIK ON DIRECT

1 Q. Could you explain a little bit more to the Judge
2 about his desire to be alone?

3 A. Eddy would go off. He would like go in the woods
4 to go hunting and he would go in the trees for hours.
5 He would go off and want to be left alone. If you did
6 try to talk to him, he would get mad and didn't want
7 you around.

8 He just had -- he was almost territorial.

9 Q. Was that his -- was that desire to be alone, was
10 that a trait -- at what point in his life did you begin
11 to notice that?

12 A. When he got more closer to a teen. When we were
13 younger, Eddy would like to play with other children,
14 but other children would pick on him.

15 Q. Why?

16 A. Well, Eddy was slow. I mean, if you give him a
17 football he could do that, but when it came to school
18 work or reading he couldn't do those things, and some
19 things required skill.

20 Even some games require skill, like Monopoly, and
21 Eddy could not count money. He didn't understand the
22 rules of certain games or card games, but you give him
23 a football or a baseball and he could do that.

24 Q. You said something about -- he stopped school
25 when?

MR. R. WEIK ON DIRECT

1 A. It was in 1985.

2 Q. He dropped out?

3 A. No, sir. He had got in trouble with some alcohol
4 at school, and he was on probation.

5 Q. Right.

6 A. And a guy at school patted him on the behind, and
7 they were trying to intimidate him is what they were
8 trying to do, to provoke him into a fight, and they
9 did a good job because he ended up breaking the guy's
10 nose.

11 Q. And he got expelled from school?

12 A. They expelled him even though that guy and his three
13 friends beat Eddy up.

14 Q. Did Eddy have any physical defects when he was a
15 child that people made fun of?

16 A. He had a big head.

17 Q. You say he had a big head. Was this noticeable to
18 other people?

19 A. Yes. He was born with Giganticism.

20 Q. Right. So his head was abnormally large at the
21 time?

22 A. Yes, sir. Like a basketball.

23 Q. And did you observe him getting teased about that?

24 A. Yes. My aunts and uncles would pick on momma about
25 how Eddy was going to fall over because his head was too

MR. R. WEIK ON DIRECT

1 large, and they would constantly pick on him about it.

2 Q. How did he react to being picked on?

3 A. Eddy -- I remember as a child him laughing about
4 it, and even I would laugh about it, but Eddy -- it
5 didn't really bother him, but as he got older this one
6 picture we had he did not like looking at it.

7 It was a picture of me and him both in diapers and
8 he had this gigantic head.

9 Q. I want to ask you about certain conditions in
10 which you and your brother and sister grew up.

11 First of all, were any of your half-siblings, your
12 mother's first four children, living in the house when
13 you were there or when you were born and thereafter?

14 A. Yes.

15 Q. Who was there?

16 A. Well, Maggie was there when I was first born.

17 Q. And Maggie is . . .

18 A. My sister.

19 Q. She's the oldest of the four children by your mother's
20 first husband?

21 A. Yes.

22 Q. And she was living in the home?

23 A. When I was born she was there a little while longer.

24 I think she left right after she graduated.

25 Q. Who was next?

MR. R. WEIK ON DIRECT

1 A. I don't -- I was too young to remember, but my
2 oldest brother, Larry, he may have been there. I do
3 remember he got married and went off to college and
4 all.

5 Then there was only Jose and Rhonda.

6 Q. Your mother's first husband was Filipino?

7 A. Yes, sir.

8 Q. Did Rhonda live in the house for some time after
9 your mother married your father?

10 A. Yes, sir.

11 Q. Do you recall how old she was when she left?

12 A. Oh, about seventeen or eighteen.

13 Q. Do you recall how old Maggie was when she left?

14 A. Maggie left right after she graduated. She moved
15 to Florida with Bill and got married.

16 Q. All right. How would you describe the economic class
17 that you and your siblings were brought up in?

18 A. It was a two story home that had an attic, and the
19 attic really wasn't finished. Downstairs was one giant
20 bedroom that we all lived in, and there was another
21 big bedroom my mother and father stayed in, and there
22 was a dining room and kitchen and a front room.

23 Q. How would you describe it?

24 A. Very poor.

25 Q. What did your dad do for a living?

MR. R. WEIK ON DIRECT

1 A. He was a boilermaker.

2 Q. Was that when you were young?

3 A. To my earliest knowledge he was a boilermaker, up
4 until I was about eight.

5 Q. What happened then?

6 A. He come in contact with Spinal Meningitis.

7 Q. And what happened after he contracted Spinal Menin-
8 gitis?

9 A. He was hospitalized for a long time.

10 Q. And after he was released from the hospital, do you
11 recall where he went to work then?

12 A. Well, he was unemployed, recovering, for a while,
13 and then he went to work doing welding jobs, like Alumax,
14 Burgin, DuPont, and he ended up at the lumber mill.

15 Q. What was the condition of the house that you lived
16 in?

17 A. It was a very old home and it had no -- it had one
18 propane heater and eventually that -- the line messed
19 up on that and they went to a wood stove, and it had old
20 galvanized pipes that rattled; had a small bathroom.

21 There was no air-conditioning, no fans.

22 Q. What about -- was it kept clean or not?

23 A. Sometimes. My dad was a clutter-bug.

24 Q. What do you mean?

25 A. Like he'd get a magazine or newspaper and be done

MR. R. WEIK ON DIRECT

1 reading that and sit it there and it would sit there
2 for months, and he would dare anybody to move it.

3 Q. What happened if someone moved it?

4 A. He'd go crazy and start breaking up things.

5 Q. Did there come a period of time when -- I'm sorry.

6 Did you have a well or were you on city water?

7 A. We had a well.

8 Q. Did you have a septic tank?

9 A. Yes, sir.

10 Q. And did there come a time in your childhood when
11 the well became non-functioning?

12 A. Yes, sir.

13 Q. What happened?

14 A. My father -- the pump went out on the well and it
15 would often lose its prime, and it was an old pump from
16 back in the thirties. You couldn't get parts for it.

17 And they would have to make these home-made gaskets
18 for the pump, and when they were picking the pump up
19 they had the pipes held up with a chainsaw, and as my
20 daddy and his marine friend was working on it my daddy
21 hit the chainsaw and all the pipes fell down into the
22 well.

23 Q. And stopped the water?

24 A. Yes, sir.

25 Q. How long was that well non-functioning?

MR. R. WEIK ON DIRECT

- 1 A. Almost two years.
- 2 Q. What did the family do for water, for baths, for
3 clothes, for . . .
- 4 A. Every time we had -- every time we bought milk we
5 kept the jugs, and daddy would go off to a place, a
6 construction site, and bring home a bucket, and we'd
7 have to clean them out and we'd put them in a wheel bar-
8 row and push them down the road about an eighth of a
9 mile to this lady's house and fill them with water.
- 10 Q. How long did that last?
- 11 A. How much did the water last?
- 12 Q. How long did you all carry water?
- 13 A. Two years.
- 14 Q. Who participated in the carrying of the water?
- 15 A. Everyone. If you didn't bring in water, you didn't
16 bathe and you didn't drink any.
- 17 Q. How did you heat water for baths?
- 18 A. We had to heat it on the stove.
- 19 Q. How long did that last?
- 20 A. For the duration. Well, once we got the pump up
21 and running, the water heater -- mom forgot to -- she for-
22 got to turn the water heater off when the pump went out.
23 She left the breaker on, so this water heater was run-
24 ning constantly and it finally shorted out.
- 25 So once we got the pump running, the water heater

MR. R. WEIK ON DIRECT

1 was non-functioning.

2 Q. How long did that last?

3 A. Up until I was in the ninth grade of high school.

4 Q. How long?

5 A. So two years of no water . .

6 Q. Right.

7 A. . . which was the last part of my fourth grade
8 year.

9 Q. Eddy was in the fifth grade?

10 A. Yeah, Eddy was in the fifth grade, and I was in
11 the ninth grade -- so that was in 1983.

12 Q. And that lasted for . .

13 A. The year Elvis Presley died up to 1983 which was
14 . .

15 Q. When did Elvis Presley die? Seventy-eight?

16 A. Seventy-nine. I just remember it was around the
17 time Elvis Presley died.

18 Q. In comparison to other people in your neighborhood,
19 how did the Weik Family compare economically to the
20 others?

21 A. We didn't. They had -- the kids would have brand
22 new bicycles, brand new shoes, the top main clothes. We
23 got thrift store clothes, hand me downs.

24 The kids would call the shoes skips. They were
25 the little cheap shoes you buy at Family Dollar and Kmart.

MR. R. WEIK ON DIRECT

1 We had to wear those.

2 Q. Did you and your brother and sister get teased by
3 other children?

4 A. Yes.

5 Q. Tell me about that.

6 A. Well, like if the kids had a birthday party, we
7 never got invited because we were too poor to bring a
8 present, or they were -- we were not good enough to be
9 in their homes.

10 The kids in the neighborhood were also the descen-
11 dants of my grandmother's half sister, and my grandmother's
12 half sister and grandmother had -- didn't claim kin be-
13 cause my grandmother was Indian and the half sister was
14 half white, and just a little Indian, so she -- my aunt
15 had told her children that we were black.

16 Q. And so did that cause any problems for you with the
17 other children in the neighborhood?

18 A. Yes, sir.

19 Q. Tell me about that.

20 A. They would tell me that my mother was -- excuse my
21 language and I mean no disrespect to the black people in
22 here -- that my mother was a nigger and they would call
23 us nigger kids and tell us they didn't want us at their
24 church.

25 Q. Was that something you all were subjected to, you

MR. R. WEIK ON DIRECT

1 and your sister and Amy?

2 A. Yes, and Maggie, Rhonda -- all of them would tell
3 us stories about how they had went through it as well.
4 We was looking at something that was like over twenty-
5 five years.

6 Constantly those kids were being taught every gen-
7 eration to hate us.

8 Q. Okay. Do you remember how that affected your bro-
9 ther?

10 A. Eddy would stand there and he was like, you
11 better leave me alone; you better stop it. I stood up
12 a couple of times, but we would always get beat up, hit
13 with rocks, throwed in the dirt.

14 It wouldn't be one. It would be seven or eight of
15 them. Come in the yard -- we would have the gate closed
16 and they would come in the yard when momma ain't looking
17 and drag us out in the road and beat us up.

18 And eventually Eddy would never ignore it. I learned
19 to ignore them, but Eddy wouldn't.

20 Q. He got pretty upset?

21 A. He got upset. He couldn't fight. Eddy didn't know
22 how to fight.

23 Q. What did he do?

24 A. He would just stand there with -- like this.

25 Q. Like what? Describe what you're doing.

MR. R. WEIK ON DIRECT

1 Q. Instead of having a fist like you're supposed to, he
2 would have them outward. Instead of a fist ready to
3 block or fight, he would stand there like this and he
4 was just wide open.

5 They would start beating on him and he'd just be
6 standing there being beat while trying to barely move
7 his arms.

8 Q. All right.

9 A. And I couldn't do nothing because they would have
10 me with my arm twisted behind my back watching it.

11 Q. Okay. I want to talk about your father and your
12 experiences with him, your and Eddy's childhood.

13 I want to talk to you about your father, and about
14 what kind of father he was.

15 Did your father tell you stories of his life prior
16 to the time he married your mother?

17 A. He would tell us these stories, like I used to have
18 to walk to school with holes in my shoes through seven
19 foot of snow just to catch the bus.

20 Q. I think my father told me that story. I want you
21 to move on to his life when he became an adult.

22 A. He told me he got in some trouble when he was seven-
23 teen and they forced him to join the service, and then
24 upon completion of one branch of service he was drafted
25 into another branch of service.

MR. R. WEIK ON DIRECT

1 Q. What branch of service?

2 A. He was in then as a Seabee and then he was drafted
3 into the Marine Corps about 1963, and he was sent off on
4 an advisory committee for the CIA to Vietnam.

5 Q. So he was sent off by the CIA to Vietnam?

6 A. Yes, sir, to escort the advisory committee.

7 Q. All right. Did he tell you what he did in Vietnam?

8 A. Execute prisoners.

9 Q. Did he tell you how many people he was responsible
10 for killing?

11 A. Over two thousand kills.

12 Q. Did he tell you how long he was in Vietnam?

13 A. Two tours.

14 Q. Two tours -- did he tell you how long these tours
15 lasted?

16 A. No, sir.

17 Q. Were the stories your father told you about, being
18 in the Navy and then being drafted in the Marines, and
19 then going to work for the CIA -- were they stories you
20 heard about all through your childhood?

21 A. Yes, sir.

22 Q. Did your father describe to you and your brother
23 methods to kill people?

24 A. Yes, sir.

25 Q. With his hands?

MR. R. WEIK ON DIRECT

1 A. Yes, sir.

2 Q. All right. I'd like you to tell the Judge some
3 of what he told you about killing people.

4 A. My father used to tell us that you have to make a
5 person hurt; that if a man can't see you, a man can't
6 hurt you.

7 So if you're going to hit somebody, hit them to-
8 wards the temple. This would knock them silly, and they
9 would bleed.

10 Or jab them in the windpipe and crush the wind-
11 pipe.

12 Q. When did you start hearing these stories? How old
13 were you?

14 A. When the beatings by the neighboring kids started,
15 when I was five or six years old.

16 Q. The things that your father talked about, were
17 these things that he taught you to do?

18 A. Yes, and my sister.

19 Q. What was the purpose of teaching you that?

20 A. To defend ourselves. He said, if you hurt one of
21 them enough, the rest of them will leave you alone.

22 Q. Did he tell you about any other methods of hurting
23 or killing people with your hands, without using any
24 weapon?

25 A. Yes, sir.

MR. R. WEIK ON DIRECT

1 Q. Tell me about that.

2 A. Come up through the middle where the liver is, and . .

3 Q. The middle of what?

4 A. To the abdomen here. Come up right underneath here
5 -- come up and go into the heart, called a heart grab,
6 or a heart snatch.

7 Now, there are other methods with a weapon, I know,
8 but he also talked about grabbing the groin.

9 Q. Do you think those are things that he did?

10 A. Yes, these are things that he did in the jungle
11 training.

12 Q. And he said he killed people like that?

13 A. Yes.

14 Q. By heart grabbing?

15 A. And snatching the throat, crushing the windpipe.

16 Q. He said he did that as well?

17 A. Yes, sir.

18 Q. Did he ever talk about actually tearing someone's
19 windpipe to kill them?

20 A. Yes, sir.

21 Q. Did he say he had done those things in Vietnam?

22 A. Yes, sir. He also said he used garrots on people.

23 Q. Used what?

24 A. A garrot -- it's piano wire with two pieces of
25 wood.

MR. R. WEIK ON DIRECT

1 Q. All right, and did you believe those things your
2 father told you about that he said he had done?

3 A. Yes, sir.

4 Q. All right.

5 A. My father was a huge man when we were children --
6 muscular and big, and he's not --- he's half the size he
7 was now.

8 But he was a huge man and solid. He said the
9 Marines had made him that way.

10 Q. All right. Do you recall being on camping trips
11 with your father and Eddy?

12 A. Yes, sir.

13 Q. And do you recall him asking you to stand guard?

14 A. Yes, sir.

15 Q. I'd like you to tell the Judge about that. How old
16 were you?

17 A. I had to be -- it was after my daddy got out of
18 the hospital because the military surplus store opened
19 up down the road.

20 I was around eight or nine. I was in the third
21 grade.

22 Q. And Eddy was about a year older?

23 A. Yes, sir.

24 Q. All right. So when you stood guard on those camping
25 trips, did your father give you anything to stand guard

MR. R. WEIK ON DIRECT

- 1 with?
- 2 A. A forty-five caliber automatic.
- 3 Q. Was it loaded?
- 4 A. Yes, sir.
- 5 Q. And so you and your brother would stand guard with
- 6 a forty-five, I guess, service pistol?
- 7 A. Yes, sir.
- 8 Q. And your father would be?
- 9 A. Sleeping.
- 10 Q. In the tent sleeping?
- 11 A. Uh hm, sleeping and probably drinking with his
- 12 friends.
- 13 Q. What did he tell you that you were guarding
- 14 against?
- 15 A. The VC.
- 16 Q. Vietcong?
- 17 A. Yes, sir.
- 18 Q. Did he instruct you what to do if you saw any VC?
- 19 A. Shoot them.
- 20 Q. Did you ever shoot anybody?
- 21 A. No. I heard a couple of rattles and I wanted to
- 22 shoot but my dad said to wait until you see them; you
- 23 probably won't see them because they sneak up on you in
- 24 tennis shoes and cut your throat.
- 25 So we . . .

MR. R. WEIK ON DIRECT

1 Q. Do you know if Eddy ever shot?

2 A. No, not at the time, no.

3 Q. Did you have a belief, based on what your father
4 told you, that you had VC near your house?

5 A. Yes. They were sneaking up through the woods and
6 slowly creeping their way into America, to take over
7 America.

8 Q. And you believed that they were near your house?

9 A. Yes, because he would bring home supply to build
10 these bunkers.

11 Q. Did he build bunkers?

12 A. He would bring home bags and bags of concrete, wea-
13 pons, sea rations, anything you can buy at military sur-
14 plus -- helmets. Army helmets -- me and Eddy had our
15 own. We had our own canteen, our own survival
16 packs.

17 We had our own bayonets. We had our own gun clean-
18 ing kits -- everything.

19 Q. And the purpose of that was what?

20 A. To protect us when the VC came. Eventually I grew
21 out of that.

22 Q. Okay. How old were you?

23 A. About thirteen or fourteen.

24 Q. What about Eddy?

25 A. Eddy was fascinated with guns.

MR. R. WEIK ON DIRECT

1 Q. As far as the things your father said about the VC
2 being coming to take over America, do you think Eddy
3 believed that?

4 A. Well, when we got about fifteen and we started hang-
5 ing out at the VFW hut, the people would tell us that
6 my dad was crazy.

7 Q. Did you believe them?

8 A. At first I didn't, and then I started realizing that
9 the war -- this war ended with Vietnam and there was no
10 threat.

11 So eventually the brain-washing started to wear
12 off and we started to . .

13 Q. Did it wear off on Eddy?

14 A. Yeah, we -- even Eddy started telling me that daddy
15 was shell-shocked.

16 Q. He told you he was shell-shocked?

17 A. Yeah.

18 Q. Did your father describe himself as being shell-
19 shocked?

20 A. At that time he described it as being serious and
21 if we didn't take it serious he would beat the fool out
22 of us.

23 Q. Did your -- I'd like to ask you about what your
24 father was like to your brothers and sisters and you.
25 What was his discipline like?

MR. R. WEIK ON DIRECT

1 A. Well, he was very strict about -- we couldn't have
2 friends over.

3 Q. Why?

4 A. Because they come to spy and go back and tell their
5 families.

6 Q. How old were you when he'd tell you that?

7 A. Five, six, seven -- all the way up to when I was a
8 teenager.

9 Q. And did you believe them?

10 A. Yeah. They're going home to tell their parents what
11 I got in my yard so they can come and steal it.

12 Q. Now, was Eddy disciplined that same way?

13 A. Yes.

14 Q. Was there a rule in your house about discussing
15 what occurred in your house?

16 A. You don't discuss nothing.

17 Q. That was from your father?

18 A. From mother and father.

19 Q. Why -- did they explain to you why they didn't
20 want you to talk about what happened in the house?

21 A. I don't know, but I know if we did you would wish
22 to God you hadn't.

23 Q. Why was that?

24 A. You'd be beat. Beaten.

25 Q. By whom?

MR. R. WEIK ON DIRECT

1 A. Both of them. My mom would snatch you up, and my
2 dad would beat you with anything they could get their
3 hands on.

4 Q. Do you recall things you were beaten with?

5 A. I've been beat with rubber hoses. I've been beat
6 with a switch from a rose bush. I was beat with a car
7 antenna, coax cable, a machette.

8 Q. Let me ask you, did Eddy get beaten with things
9 like that?

10 A. Eddy got beaten but they were more lenient with
11 Eddy.

12 Q. Why?

13 A. I don't know. I guess they felt sorry for him.

14 Q. All right.

15 A. But if Eddy did something, all Eddy would have to
16 say is Chris knew about it, and they would just snatch
17 me and beat me along with him.

18 Q. Do you recall your father using a machette on both
19 of you?

20 A. Yes.

21 Q. Tell the Judge about that.

22 A. My father had made me a swing and Eddy had a tree
23 house, and I was in my swing one day, swinging, minding
24 my own business. A friend of mine came to visit, and
25 he was talking to me, and dad said, Chris, you've got

MR. R. WEIK ON DIRECT

1 to rake up the yard. I told you to rake the yard up,
2 and if you don't rake the yard I'm going to put my belt
3 on you.

4 I went to rake the yard and got out of my swing.
5 Well, my friend came to visit me. Eddy was out there
6 talking to him, and Eddy had this tree house he was brag-
7 ging to my friend how he was going to bring girls to
8 his tree house and he was going to have this girl here
9 and this girl here, and this was the make-out section
10 of the tree house, and this is where they were going to
11 sit and talk, and, you know, my friend is believing Eddy,
12 that he was actually going to be bringing girls over.

13 After I finished raking the yard, dad said, okay,
14 you can go get back on your swing. So when I went to
15 get on the swing Eddy jerked the swing from me.

16 Q. How old were you?

17 A. Eleven years old.

18 Q. And what happened?

19 A. I was trying to get in my swing and he wrapped the
20 swing around me, around my neck, and he started wrapping
21 me up in the thing, and he said, watch this, Andy, I'm
22 going to spin him.

23 Well, if he would have spun me, it would have broke
24 my neck, and I was gagging, and I remember seeing my
25 daddy come with a machette, and the first thing my

MR. R. WEIK ON DIRECT

1 daddy did was grab Eddy and he chopped the swing down
2 which released me.

3 Then he kept whipping Eddy with the flat blade of
4 the machette, and he told my friend, Andy, to go home,
5 and then he started tearing up the tree house, and then
6 when I was getting off the ground, barely could breathe,
7 he grabbed me and beat me with the machette for letting
8 Eddy do that to me.

9 Q. He beat Eddy and then he came and beat you?

10 A. Yes, and I was just getting up off the ground from
11 being asphyxiated.

12 Q. Did your father have other methods of discipline
13 besides what you've described when you were beaten? Did
14 he also have some other methods of punishment?

15 A. Yes, sir. He locked us in the attic.

16 Q. Explain that to the Judge.

17 A. It was a hot day. To torture us, he nailed the
18 windows down so there would be no breeze, and he'd make
19 you sit on the bed.

20 Sometimes he'd make you cover up in a blanket and
21 think about things.

22 Q. About how old were you when that happened?

23 A. Twelve, thirteen, fourteen.

24 Q. Did the same thing happen to Eddy?

25 A. Yes.

MR. R. WEIK ON DIRECT

- 1 Q. How long did you stay in the attic?
- 2 A. Until he felt like letting us out.
- 3 Q. Do you remember how long that was?
- 4 A. Hours. You'd be pouring sweat.
- 5 Q. And did your father tell you why he was doing that
- 6 to you?
- 7 A. Because he was tired of us fighting among us.
- 8 Q. Any other methods?
- 9 A. He had a boat that didn't work but it had a cabin
- 10 on it, and when it got cold or rainy he'd put us out in
- 11 that boat.
- 12 Q. Where was the boat?
- 13 A. The boat was in the yard.
- 14 Q. Put you out in the boat in the cabin?
- 15 A. Make us sit in the cabin of the boat.
- 16 Q. For how long?
- 17 A. Until he felt like letting us come back in.
- 18 Q. What about your father's temper?
- 19 A. If he lost his temper he would go and start breaking
- 20 things up in the house.
- 21 Q. Do you remember any specific occasions of that?
- 22 A. Yes. He was in electronics college and he was work-
- 23 ing on this television, and it was so he could get his
- 24 associate's in electronic technology, and he needed this
- 25 one part.

MR. R. WEIK ON DIRECT

1 Well, he procrastinated on getting that part from
2 Tuesday until Sunday, and the television sat on the table.
3 We were told, get near it and he'd beat us, beat the
4 hell out of us. So we were scared to get near it.

5 Finally, on Sunday he starts working on it, and he
6 realizes -- it was some type of semi-conductor inside
7 the television -- he gives my mother the part number and
8 tells her, I need this part.

9 Mom takes all of us kids to go to Charleston to get
10 this part. The first store we went to didn't have it,
11 and . .

12 Q. So your mother was not able to find the part?

13 A. No, she was not able to find the part.

14 Q. So you went back to your house?

15 A. Yes. The stores were closed and the one open said
16 they wouldn't have it until Tuesday.

17 Q. What did your father do?

18 A. He called her a liar and said she didn't try hard
19 enough. She wanted him to fail because she was afraid
20 he would succeed and leave.

21 Q. He would what?

22 A. He would succeed -- get his degree -- and leave, and
23 so he took the television the college had given him and
24 threw it on the floor and started stomping it.

25 And then he went over to her television that her

MR. R. WEIK ON DIRECT

1 husband had given her and threw it on the floor and
2 stomped it.

3 And he went upstairs and took the television that
4 someone in the neighborhood had given him to fix and he
5 threw it down the stairs.

6 Then he went and started breaking up my mother's
7 china that her husband had given her, her first husband
8 had given her.

9 Then he told all us kids to go to bed, and that we
10 were grounded.

11 Q. This was you and John and . .

12 A. And Amy, yes. All three of us.

13 Q. And were you scared?

14 A. Yes, we were laying in bed, hearing things get broken
15 and momma screaming and begging for daddy to stop.

16 Q. How old were you?

17 A. I was in the fifth grade.

18 Q. Did your father have any other weapons?

19 A. Yes.

20 Q. Tell us what you remember about that?

21 A. A forty-four Magnum, a German Malzer, cap and ball
22 pistols, handgranades, dynamite, blasting caps.

23 Q. Where were they? Where did he have all of them?

24 A. Down in the bunker so that when the Vietnamese and
25 the Communists come to American, he would be ready.

MR. R. WEIK ON DIRECT

1 Q. And it was just sitting in the bunkers?

2 A. Yeah. It was in jars.

3 Q. Where did he keep the dynamite?

4 A. Kept it in his room until he eventually started to
5 build this bunker in the field and it collapsed.

6 Q. And did he experience any flashbacks to the time he
7 was in Vietnam?

8 A. Yes.

9 Q. Tell us about that.

10 A. We would be sitting there and watching television,
11 and he would always watch any war movie. I don't care if
12 he saw that war movie eight times, he would always
13 watch a war movie.

14 We had a Christmas special on, watching Charlie
15 Brown's Christmas -- oh, no, we can't, Apocalypse Now --
16 he switched the channel to watch Apocalypse Now.

17 Then he would get his gun out and he's start put-
18 ting the clips in and cock it and load it, and then he's
19 getting the bayonet out and start sharpening the bayonet
20 and putting his Army helmet on and putting his pack on --
21 getting everything ready.

22 Q. And this was while you were sitting there watching
23 television?

24 A. Ye.

25 Q. How often would this happen?

MR. R. WEIK ON DIRECT

1 A. I would say more than once in a day.

2 Q. More than once a day?

3 A. Yes, sir. All the time.

4 Q. Did anything happen between your father and Amy?

5 A. I don't recall anything with Amy. It was Rhonda.

6 Q. What was that?

7 A. I was two or three years old when this happened,
8 so I don't recall. I just remember my mother telling
9 me, so this would all be hearsay.

10 But she said that my dad flipped out and thought
11 she was Vietnamese and grabbed her by the throat and
12 choked her.

13 And he had her almost where she was blue in the
14 face, and my mother couldn't get him to stop so she
15 grabbed a big iron frying pan and smacked him good
16 and hard -- knocked him out with it.

17 Q. (Question not audible on tape)

18 A. Eddy had been playing with the cord. The dog had
19 been chewing on it and it had like raw spots. She had
20 asked my dad to tape it up with electrical tape.

21 So she was ironing and at the time she was preg-
22 nant. Eddy reached up and he grabbed the cord and he
23 started getting shocked, so she went to grab Eddy and
24 she got the full volt of the electric shock.

25 And it more or less induced labor.

MR. R. WEIK ON DIRECT

1 Q. (Question not audible)

2 A. They had talked about it but they never told me about
3 the twin until I was twelve.

4 They had just talked about Eddy almost causing momma
5 to get killed by grabbing ahold of that cord.

6 Momma would say if daddy would have fixed the cord
7 it wouldn't have been no problem, and how the hell am I
8 supposed to iron with no cord, you know.

9 Q. Did your father make bombs?

10 A. My father experimented with everything. He talked
11 about when he was in the Seabees he was part of a demo-
12 lition crew, construction battalion, and their job was
13 the runways, and most of the runways were in Greenland or
14 Iceland where there was a lot of snow.

15 They had to use a lot of explosive which was where
16 he had learned a lot of his techniques from, his explos-
17 ive techniques.

18 Q. Did he show you how to make bombs?

19 A. Yes, he showed us everything from making home-made
20 fuses. He would buy books called the Poor Man James
21 Bond, and he would buy videos that showed how to make
22 plastics from the red gel that most people can buy these
23 days.

24 Things that you put in your car. The silver powder
25 you put in your radiator to stop leaks, and there is

MR. R. WEIK ON DIRECT

1 another jel that almost looks like transmission fluid,
2 and these together mixed at a certain temperature, will
3 make a homemade plastics, and if you shot them it would
4 become very deadly.

5 Q. Were you afraid?

6 A. Yes, terrified.

7 Q. What about Eddy?

8 A. He got a little brave as he got a little older.

9 I thought daddy would beat him down but he would stand
10 up to him some.

11 Daddy did grab him by his throat and beat him down
12 at times.

13 Q. (Question not audible) What is dehag?

14 A. Dehag is a spirit that supposedly comes to you at
15 night.

16 It is in reference to what is incubus and (inaud-
17 ible). They are spirits that drain the life force from
18 people.

19 They sit on you and hold you.

20 Q. Have you ever experienced that?

21 A. Have I experienced that feeling? Yes, I have ex-
22 perienceed that. Can't wake up and feel like something
23 is pressing you down.

24 Q. Is that the same thing as a hag?

25 A. I never heard it called a hag. I have heard it

MR. R. WEIK ON DIRECT

1 called a hunt.

2 Q. Who did you hear about this from?

3 A. My mother and grandmom.

4 Q. What did they tell you?

5 A. Mother and grandmother would tell us a lot of
6 stories when we were younger. I didn't hear the
7 thing about the hag until I was dating this girl
8 and her mother and father was calling it the hag.

9 I went, you mean, dehag -- I've heard about
10 that, and after they started talking about it is
11 when I started having the experience.

12 Q. And tell us more about the experience?

13 A. Just that you couldn't move in your bed. It
14 was like you were paralyzed.

15 Q. Okay.

16 A. I myself have had a lot of psychological
17 help and they tell me it is like waking up from a
18 dream state and being partially awake and par-
19 tially asleep.

20 That's the experience of it, but my friends
21 at work tell me it is trying to drain you and if
22 you start saying the Lord's Prayer she will then
23 release you.

24 I guess that's because when you recite some-
25 thing it is waking you up.

MR. R. WEIK ON DIRECT

1 Q. And do you know if Eddy had experiences like
2 that?

3 A. Yes. All the time.

4 Q. And can he shake it off?

5 A. Well, Eddy can't memorize things. He can't
6 --- if he reads something it takes him a long time
7 to read it and then he forgets what he's read.

8 He cannot memorize.

9 Q. What about your mother? Did she discipline
10 Eddy?

11 A. No, she didn't hardly beat Eddy. Daddy was
12 real strict and he would turn on Eddy.

13 I wouldn't say he would beat us every day but
14 maybe once a month Eddy would really make daddy
15 mad and daddy would snatch him up. So if daddy
16 did beat you, it was a beating you'd remember.

17 I maybe got beat once or twice in a three
18 month period.

19 Q. And when your daddy was beating you, could
20 your mother come to your aid and make him stop?

21 A. No, momma with her begging would not stop
22 daddy.

23 Daddy would choke you until you fell to the
24 floor and then beat you, kick you. His favorite
25 was wearing those steel-toed boots and kicking

MR. R. WEIK ON DIRECT

1 you in your butt.

2 Like with me on raking the yard. If he had
3 had to tell me again about raking that yard, he'd
4 stand behind me and kick me in my butt until the
5 yard was finished.

6 I mean, not just one kick, but it was like
7 until I finished I would get repetitively kicked
8 in my butt.

9 MR. O'CONNELL: If I might request just a
10 minute, Your Honor?

11 THE COURT: Go ahead.

12 (Whereupon, there was a brief pause in the
13 proceeding, and the matter was then resumed)

14 Q. Can you tell me if you had any discussions
15 with anyone from the Office of the Solicitor con-
16 cerning the case or your brother prior to the
17 trial?

18 Q. The only person I talked to was Scott Parker

19 Q. Did you tell him the things you have said
20 today to us here?

21 A. Yes.

22 Q. How long was your conversation with him?

23 A. I remember he came over. My girlfriend and
24 I lived together at that time, and he came over
25 about seven thirty and he left at almost one in

MR. R. WEIK ON DIRECT

- 1 the morning or maybe two.
- 2 Q. And you discussed the case?
- 3 A. Yes, sir.
- 4 Q. Were you asked to testify in this case?
- 5 A. Yes, sir.
- 6 Q. The State did not call you to testify?
- 7 A. No, sir.
- 8 Q. Nor did the Defense call you to the stand?
- 9 A. No, sir.
- 10 Q. Can you tell us what is a tripwire?
- 11 A. A tripwire is a very thin wire that is down
- 12 -- that is placed down near the ground where you
- 13 cannot see it. It's made out of piano wire and it
- 14 is attached to base and it is attached to an ig-
- 15 niter.
- 16 Q. Did you father tell you he used them in service
- 17 A. Yes, sir.
- 18 Q. And did he set tripwires out in the field?
- 19 A. Yes.
- 20 Q. And did anyone trip one of his tripwires?
- 21 A. Yes, I did.
- 22 Q. And what did he say?
- 23 A. He come out and keep telling me, you're dead
- 24 -- you're dead. We just killed you and everyone
- 25 behind you.

MR. R. WEIK ON DIRECT

1 Q. Was he serious about that?

2 A. Yes, sir. He was serious. He snatched me
3 up by my hair.

4 Q. How old were you?

5 A. I was twelve years old and I had just got
6 off the school bus.

7 Q. Briefly describe, if you would, (portion on
8 question not audible on tape)

9 A. From what my aunts told me -- I didn't meet
10 my dad's sisters until I was older, like seven-
11 teen years old.

12 My Aunt Joye and Aunt -- I'm sorry. What is
13 her name?

14 Q. If you can't recall, go ahead and tell us
15 what you were going to say.

16 A. I was told two different stories. One story
17 was that dad was -- he had walked into the jungle
18 and daddy's friend had stepped on a mine, and his
19 friend blew up, and the bones from his friend
20 shot into his chest, sticking in his chest. That
21 is what my mom said my dad had told her.

22 Then later he told us the Vietcong came in
23 and ambushed him, and when the friend's bones
24 were knocked into his chest he was knocked uncon-
25 scious, so that when the Vietcong came by he was

MR. R. WEIK ON DIRECT

1 -- they saw him there with the bone sticking out
2 and they thought he was dead.

3 They left him alone but everyone else they
4 were going around and stabbing them in the heart.
5 So he was lost from his platoon a couple of months
6 and they had took his shoes, took his rifle, took his rations,
7 and he had to spend months getting back to his platoon, and at
8 that time his parents had been told he was dead or missing.

9 Q. He told you that story?

10 A. Yes, and part of that bone was lodged up in his head.

11 Q. Did you believe him?

12 A. Yes, because my father was constantly going back and
13 forth to the V.A. and that injury -- my mom would said, that's
14 going to swell up and break one day and you kids can't get your
15 dad upset.

16 So we were threatened not to upset daddy.

17 Q. Would you describe your brother as a loner?

18 A. He had very few friends.

19 Q. Do you know why?

20 A. Well, just everybody made fun of him. The only friends
21 he had were just as slow as him.

22 Q. What about (not audible)?

23 A. I never saw him with anyone. He had this friend named Travis
24 Melton who was a mental case to me, and Johnny Cole, I remember

25 .

MR. R. WEIK ON DIRECT

1 Q. Why do you think that was?

2 A. Because everybody would make fun of him.

3 Q. Even as an adult?

4 A. Yes, even as an adult.

5 Q. Did he seem satisfied to spend time by himself?

6 A. Yes, he would -- like I say, he would go fishing or work on
7 car engines. Even after I moved out of the house, he bought
8 things where he could just -- like he bought himself a teach-
9 yourself guitar, and videos.

10 Q. Did he at some point -- before he got arrested for this crime,
11 did he get in a church?

12 A. Yes.

13 Q. What church?

14 A. The Gateway Baptist. It used to be First Church of God.
15 Well, actually, the old church that was there was the old Indian
16 church school, which was torn down later when this new preacher
17 came and said they needed to build a more elaborate church hall,
18 so people pulled the money together to pull the old church down
19 and build the new church.

20 Q. What did you think when you heard Eddy had joined a church?

21 A. Well, at first it surprised me because Eddy -- he wasn't a
22 religious person. When I was religious, he would always tell me
23 I was stupid and there was no such thing as God; Jesus was a space
24 alien and Mary was abducted by aliens; it was nothing more than ET
25 with a magic finger.

MR. R. WEIK ON DIRECT

1 Q. Was it your observation that Eddy was sincere when he joined
2 the church?

3 A. Yes. He got baptized and became a junior deacon in the
4 church.

5 Q. And were you involved in that church at that time?

6 A. No, sir. I considered them a bunch of fanatics.

7 Q. Why is that?

8 A. Because they were always preaching on everybody what you
9 could or couldn't do, and if you didn't you were going to hell,
10 but yet the preacher was riding around in a car -- a big Cadillac
11 car, and he'd wear these glasses and he had a little microphone,
12 and he claimed that he could heal people with the touch of his
13 hand.

14 He claimed that he was given the gift from God, the gift of
15 tongues, the gift of interpretation, the gift of healing.

16 Q. Did Eddy believe that was true?

17 A. No, Eddy didn't like that either, and this preacher was
18 later found out to -- they later got rid of him.

19 Q. And how did Eddy seem to you as an adult even after he
20 joined the church?

21 A. Well, he always got depressed a lot of times, and he took a
22 great interest in Daniel.

23 Q. That's his son?

24 A. His son, yes. He started -- if she needed money he would
25 give her money. If she needed groceries, he would go out and get

MR. R. WEIK ON DIRECT

1 groceries for both the children. He didn't treat Amber no differ-
2 ent, who was Daniel's sister by the other marriage.

3 He even-- I would talk to him and he would say that Tom took
4 care of Daniel all the years I wasn't there. I don't mind taking
5 care of Amber.

6 Q. Did Eddy believe in what you called the Hag?

7 A. He started talking about Hager or he was talking about Hagler
8 always. It was kind of a repeated thing, at least two or three
9 times a week.

10 He would say he couldn't move and it would hold him, and you'd
11 hear all these whisperings and he would see a bright light out of
12 the corner of his eye.

13 Q. And would he appear to be afraid?

14 A. Yes, he was terrified. He started taking Melatonin to sleep
15 because he couldn't rest. He would get bottles and bottles of
16 Melatonin.

17 Q. (Not audible on tape)

18 A. Yes, it was his ex-girlfriend. It was Susan -- okay, this
19 monster had three heads. One was Susan, yes, and one was Crystal,
20 this girl he had dated, and the other one I can't recall.

21 I would let it go in one ear and out the other because Eddy
22 would get on my nerves.

23 Q. (Question not audible)

24 A. Yes, they were telling him in a dream that he had to kill
25 this monster. I don't remember just -- Eddy got to the point

MR. R. WEIK ON DIRECT

1 where he got a little aggravating to me, and he -- you just had
2 to be around him, because whenever he would pick on me if he didn't
3 get his way and all of a sudden he would just turn on me and start
4 calling me a faggot and things like that.

5 And I just got to the point where I just said, you leave me
6 alone.

7 Q. Do you remember if he was able to sleep?

8 A. Yeah. He couldn't sleep.

9 Q. Do you believe he was having these dreams that he described
10 to you?

11 A. I believe he was having these dreams.

12 Q. Okay.

13 A. Because I always thought that was your own conscience getting
14 the better of you.

15 Q. Okay. Now, there are several members of your family here to-
16 day in support of Eddy?

17 A. Yes, sir.

18 Q. And your father and his new wife?

19 A. Yes, sir.

20 Q. And your sister, Magagie, and her husband, Bill?

21 A. Yes, sir.

22 Q. And the other lady, who is that? And those with her?

23 A. That's Beth Risher and Sam Varner and my sister, Amy.

24 Q. Okay, they're related to your mother?

25 A. Yes.

MR. R. WEIK ON DIRECT

1 Q. She was a Varner? Ms. Risher was a Varner?

2 A. Yes, she was adopted by my Uncle Sammy.

3 Q. Okay. You didn't want to testify when your father was in
4 here. Is that fair to say?

5 A. Yes, sir. None of them actually.

6 Q. None of them?

7 A. I didn't want to testify in front of none of them, no.

8 Q. Why was that?

9 A. Because as soon as this thing would be over, they'd be on the
10 phone gossiping and Chris said this, and, oh, my God, the things he
11 said about his momma.

12 And, you know, the whole family, not just one or two, they
13 would pile in on me.

14 Q. Are you still afraid of your father?

15 A. Not as much.

16 Q. Okay.

17 A. I learned to handle -- I can handle myself now.

18 Q. But still there is something?

19 A. I am not -- I wouldn't turn my back on him.

20 Q. Why?

21 A. Because I think he would attack me if he had the choice to
22 do that.

23 Q. Why?

24 A. To shut me up or . . .

25 Q. He has heard what your testimony has been here today, so you

MR. R. WEIK ON DIRECT

1 say you would be afraid now to turn your back on him?

2 A. Yes.

3 (Brief pause in the proceeding)

4 THE COURT: Anything further?

5 MR. O'CONNELL: Excuse me one second, Judge.

6 BY MR. O'CONNELL:

7 Q. You had a conversation with the female attorney who repre-
8 sented your brother during the trial?

9 A. After the trial.

10 Q. Where was that conversation?

11 A. Out in a hallway and a room back there.

12 Q. What did she say to you?

13 A. I asked her when I was going to get to testify, and she says,
14 you're not going to get to testify.

15 And I said, well, why was I subpoenaed to Court, and she said
16 that the Judge wanted you here to see your brother's fate, in case
17 you get any idea about acts of vengeance.

18 Q. Would she have any reason to believe you would do anything
19 if your brother was found guilty?

20 A. No, sir. I had never met her.

21 Q. That was the first time you met her?

22 A. Yes, sir.

23 Q. Okay.

24 A. There was also -- I had told her about my alcohol addiction
25 and they would need to -- I said, I know some of the things I'm

MR. R. WEIK ON DIRECT

1 going to tell you is far-fetched and you don't believe it would
2 happen in a home.

3 I said, but if you want, I'll give you permission to pull my
4 records from the Kennedy Center and from the Dorchester County
5 Drug Abuse Center. I said, everything -- I can verify everything.
6 This is like a two year period prior to Eddy shooting Susan. I was
7 talking to psychiatrists about what was going on in the home be-
8 cause they wanted to know why I was an alcoholic.

9 Q. What did she say?

10 A. She said it wasn't relevant because there wasn't no trial.

11 Q. Would you please answer any questions that this gentleman
12 has?

13 A. Yes, I will.

14 MR. ZELENKA: May we approach?

15 (Conference at the bench between counsel and the Court off
16 the record)

17 THE COURT: Mr. Weik, I'm going to take a break at this point
18 and I would ask you since you are in the middle of your examina-
19 tion to please not discuss your testimony with any of the lawyers
20 from either side.

21 You are free to use the restroom, you are free to talk to
22 them about the weather or sports or anything else, but not about
23 your testimony.

24 WITNESS: Yes, sir.

25 THE COURT: We'll start back in approximately five minutes. We
will take our morning break at this time.

1 (Whereupon, the Court stood in recess for a brief period and
2 then resumed)

3 THE COURT: Cross examination.

4 MR. ZELENKA: Yes, sir. Thank you.

5 CROSS EXAMINATION

6 BY MR. ZELENKA:

7 Q. Mr. Weik, where were you living in May of 1999?

8 A. Where was I — I was living in the City Limits of Moncks Cor-
9 ner.

10 Q. Were you aware at that time that your brother's trial was
11 going on?

12 A. Yes, sir.

13 Q. How did you become aware of that?

14 A. Well, my mom told us Eddy was going to go to Court next week.

15 Q. Did you come to the Courthouse on your own?

16 A. No, sir. They subpoenaed me to be here.

17 Q. Were you here the entire time?

18 A. No.

19 Q. Just that one day?

20 A. Two days.

21 Q. Okay.

22 A. A Thursday and a Saturday.

23 Q. Prior to that, after the incident where Susan was killed, did
24 you go to the jail to visit your brother?

25 A. No, sir.

MR. R. WEIK ON CROSS

1 Q. Why did you not do that?

2 A. Eddy had become a thorne in my side so much from a child that
3 I didn't really remember want much to do with him once he became
4 an adult.

5 And I had sat for some time in that jail --- not Dorchester,
6 but Berkeley County Detention Center, and I had to do my community
7 service, and I was trying to forget some things that happened in
8 there, and I didn't want to come back because of those experiences.
9 I had my own psychological trauma that I was trying to cope with
10 and I was trying to -- well, actually today is ten years since I
11 quit drinking.

12 Today is my ten year anniversary, and I was determined I was
13 going to give up the habit.

14 Q. You talked about to Mr. O'Connell your experiences with the
15 family.

16 A. Yes, sir.

17 Q. But in May of 1999, while the trial was going on, you met
18 with an investigator for the defense, isn't that correct?

19 A. Yes, sir. He came over to my home on a Tuesday. He had
20 called me first to meet him at his motel. At the time I was
21 washing clothes and I couldn't leave, and he wanted to take me
22 out to dinner, and I said, no, I've got work to do. I just got
23 off work.

24 So he said, would you mind if I meet you at your home, and
25 I said, yes, it will be fine.

MR. R. WEIK ON CROSS

1 So he came to my house about seven thirty or eight o'clock on
2 that afternoon.

3 Q. Have you reviewed any documents within the past year or so
4 which summarized that meeting that you had?

5 A. The only time I've reviewed anything was with Michael O'Connell
6 last week.

7 Q. Okay, and somebody wrote up about the meeting?

8 A. Yes, sir. Mr. Parker had written up a paper and he asked
9 me if it was true.

10 Q. All right. To your recollection, did that appear to be
11 fairly accurate?

12 A. Yes, sir.

13 Q. Now, prior to the time of the trial--you referred to your
14 brother as suffering from gigantism, is that correct?

15 A. Yes, sir.

16 Q. All right, and that's a medical term, isn't it?

17 A. Yes, sir.

18 Q. All right. Do you have personal knowledge that that in fact
19 was the diagnosis on your brother?

20 A. No, sir.

21 Q. Just . .

22 A. I was . .

23 Q. . . you heard something about that? Someone said he had a
24 big head so that's why you think that's what it was?

25 A. I was a licensed EMT.

MR. R. WEIK ON CROSS

1 Q. Okay.

2 A. For Berkeley County.

3 Q. Okay.

4 A. I had some previous knowledge in the medical field. I was
5 planning to go back to college when Eddy killed Susan to pursue
6 a physician's assistant program with MUSC. I had to drop out of
7 college when Eddy killed Susan.

8 Q. Do you know for a fact that there is any paper work stating
9 that he suffered from that?

10 A. No, sir.

11 Q. Do you know anything about the long term effects of that?

12 A. No.

13 Q. Do you know whether the head stays large or gets smaller or
14 gets normal?

15 A. . .

16 Q. Do you know anything about that?

17 A. No, sir.

18 Q. But looking back . .

19 MR. O'CONNELL: Your Honor, . .

20 Q. . . and looking at pictures, you think that is what he suf-
21 fered from?

22 A. Yes, sir.

23 THE COURT: Just a moment. Yes, sir?

24 MR. O'CONNELL: I have some paper work that might be of help
25 here.

MR. R. WEIK ON CROSS

1 A. I can only go by what my mother was speaking about and what
2 I witnessed. That's all.

3 BY MR. ZELENKA:

4 Q. Okay. Now, you have described this period of time when Eddy
5 was autistic as a child?

6 A. Yes, sir.

7 Q. And you told that to the investigator when you met with him.
8 Correct?

9 A. Yes, sir.

10 Q. And you told the investigator about --- somewhat about the
11 experience that he had with the Hag? Is that also correct?

12 A. Yes, sir.

13 Q. And what has been your experience with the Hag?

14 A. Like I was explaining, it's like laying in the bed and you're
15 wanting to get up and you can't move. You feel like you're being
16 crushed, and you are just paralyzed.

17 Q. Okay, and how often has this happened to you?

18 A. Not very often. I think maybe three or four times in my life-
19 time.

20 Q. Okay. Does the Hag have a face?

21 A. No, sir. You can't see anything.

22 Q. Just a feeling?

23 A. Yes. You just feel like it's total darkness. I have never
24 seen anything but my brother said he saw light out of the corner
25 of his eye and could hear whispering.

MR. R. WEIK ON CROS

1 Q. Okay.

2 A. I just felt something pushing me down into the bed and try-
3 ing to get up and can't move, can't turn to either side -- hands
4 and feet don't respond. You are paralyzed.

5 Q. But you had heard about that experience before your brother
6 described it to you?

7 A. Yes, sir, I had had about it, rumors of it.

8 Q. And was other peoples' experiences as they described them to
9 you similar?

10 A. Yes, sir.

11 Q. All right. Now, at the time this brother was in school, he
12 was taking classes in basic reading or literacy classes. Is that
13 correct?

14 A. Yes, sir.

15 Q. And you were in other classes than he was?

16 A. Yes, sir. I was in advanced science, mathematics.

17 Q. Was your brother jealous of you at that time?

18 A. Yes, sir.

19 Q. And how did that jealousy play out with him in the rela-
20 tionship with Eddy when you would get home from school?

21 A. He would find ways to pick on me and if he saw me talking
22 to a girl he would try to butt our heads together or slam our heads
23 together.

24 Or if I was walking with my books, he'd knock my books out
25 of my hands. He would go into my school books and take my homework

MR. R. WEIK ON CROSS

1 or blow his nose in my school books and close my school book
2 back.

3 He was constantly trying to make me look stupid in front of
4 my friends. If I won any type of award, he would get mad and
5 jealous.

6 My brother and sister in law would come for Christmas, and he
7 would say, hey, I heard you won an award in science, and they would
8 talk to me just like you and I are talking, and he would come and
9 stand in front of me and say, guess what, and come up with some
10 bull crap story just to get their attention off of me.

11 And if they would surround me and try to talk to me he would
12 move in front of me again.

13 He would constantly do this, and he would make sure that any
14 holiday, any birthday, anything, was hell for me.

15 Q. Did you have fights with your brother?

16 A. Constantly

17 Q. Physical fights?

18 A. Yes, sir.

19 Q. Did you at one time stab your brother?

20 A. Yes, sir.

21 Q. Did you describe that to the investigator in 1999?

22 A. Yes, sir.

23 Q. What happened there?

24 A. He come home drinking, and this was . .

25 Q. How old was he at that time?

MR. R. WEIK ON CROSS

1 A. He was twenty-one. I was twenty years old. I was going bowling
2 with some friends, and he come home and he was in a bad mood. I
3 guess this was right before or right after Daniel was born, and he
4 says, where are you all going, and I said, we're going bowling, and
5 he said, well, I'm going too.

6 I said, no, you're not. We've got our league and we're leav-
7 ing, and he said, you ain't going a damn place. I said, yeah,
8 I'm getting in the car.

9 So he said, I'm going bowling and I'm taking your bowling ball,
10 and I said, no, you're not. So he started slapping me in the face,
11 calling me a pussy, trying to provoke me into a fight, and I was
12 telling momma, you better tell him to quit it, and mom was like, you
13 always got to stir up some type of trouble, Chris.

14 I didn't do anything. My dad was just sitting there ignoring
15 it, watching television.

16 Eddy followed me out in the yard, slapping me in the face,
17 telling my friends, you hang around a big old pussy; he ain't no-
18 thing. Look at him, he ain't shit. Slapping me in my face, and I
19 finally got tired of it so I reached in my pocket, pulled my knife
20 out and put it behind my back.

21 I waited for him and he come to slap me and I went up under
22 the arm to go into the heart. I hit the rib and I held the knife
23 there. Eddy was pouring blood, and if I hadn't hit the rib I would
24 have killed him.

25 Q. Now, despite that, you still continued your relationship with

MR. R. WEIK ON CROSS

1 your brother and still had discussions with him?

2 A. Eddy swore that he would get me, so I more or less avoided my
3 brother. He said he would get me for what I had done. He said I
4 couldn't fight him like a man; I had to pick up a knife.

5 Q. What was your relationship like with your father during that
6 time period?

7 A. More or less strained and I stayed away from my father because
8 if you'd start talking to him he would like, shut the hell up; I'll
9 rap you up side your head, you know.

10 You know, you couldn't ask him no questions, so -- and he didn't
11 care about what I wanted to be. He wanted me to be what he wanted
12 me to be.

13 And my mom had a thing where she didn't want me moving out.
14 She wanted me to stay there and pay her money while she treated
15 me like a child.

16 So when I tried to move out, she'd try to prevent me, and con-
17 stantly when I'd put money away in the house in a jar or something,
18 because we were told banks would steal your money, they would go
19 in and take my money out the jars.

20 Eddy as well -- all of them would take my money.

21 Q. In your discussions with your father about what he did in the
22 wars and in Vietnam, did you believe that he was in Vietnam?

23 A. Yes, sir.

24 Q. Did you believe he used to be in the Navy and in the Marines?

25 A. There used to be a picture of him with his old Navy battalion

MR. R. WEIK ON CROSS

1 on the wall. I saw that, but I never saw anything with the Marine
2 Corps.

3 Q. Did you believe he did some work for the CIA?

4 A. Yes, because he talked about it all the time.

5 Q. Did you believe he killed individuals over there?

6 A. Do I believe it now? No, I don't believe it now.

7 Q. Do you think he killed anybody?

8 A. He might have. I don't know, but coming up, I mean, you're
9 being told these stories constantly and you believe it.

10 Q. How about working for the CIA?

11 A. I believed that for a long time but, like I say, now that I'm
12 older, I have the ability to search out the truth, and daddy don't
13 talk about things too much now.

14 Q. Now, there was some discussion about the Masons -- some sort
15 of relationship between your father and the Masons.

16 A. My grandfather, his father, was a Mason. I don't know nothing
17 about the Masonic Lodge.

18 Q. Do you think that was a good thing to share that information
19 with you, a good thing to prepare for?

20 A. He had friends who were Masons and Shriners. Now, to my know-
21 ledge, I don't know nothing about them. I never had really had no
22 interest in the Masons.

23 Q. Did your brother ever talk about the Masons?

24 A. Yes, Eddy talked about the Masons.

25 Q. What did he say about the Masons?

MR. R. WEIK ON CROSS

1 A. It was a way to -- if you got in the Masons, you could up
2 your status.

3 They would look out for one another.

4 Q. What do you know about Eddy's relationship with his first wife?

5 A. Oh, God, Michele. That was a practical joke that went bad.
6 She was this retarded girl at the pool. She didn't look retarded.
7 She was pretty and had a sexy body but she was mentally ill, and
8 I had a friend who was slow -- we called him Peckerwood -- and I
9 decided to set this boy up with her because they were on the
10 same brain link.

11 This way he would have a girlfriend and maybe if he got laid
12 it might make him grow up. So I set him up with Michele. Eddy
13 saw her and said, who's that, and I said that's the retarded girl
14 I set up Andy up with, and I was laughing about it. The next
15 thing I know Eddy and that girl were walking hand in hand down
16 the road. They're girlfriend and boyfriend now. It blew up in
17 my face, because she was there all the time causing trouble and
18 she would like walk around with her arms down, going (making sound).
19 Yap, yap, yap.

20 Q. Did they end up getting married?

21 A. Yes. Oh, God, that was horrible.

22 Q. Did you live in the house with them at that time?

23 A. Oh, yes, sir.

24 Q. So you had a married couple in the house, you and your parents,
25 and your sister, I guess, in the house?

MR. R. WEIK ON CROSS

1 A. Yes.

2 Q. Was this all in one bedroom?

3 A. Okay. The attic started getting cleaned out and more organ-
4 ized by then where it became a big bedroom upstairs. Eddie had one
5 half of the attic and I had the other half, but there was no di-
6 viding wall. There was just a big room.

7 This room was big enough for a double bed, a couch, a single
8 bed, and another couch. It was pretty huge.

9 It was like the span of a kitchen and dining room together,
10 and he moved her in up there, and then he expected me to go downstairs
11 and sleep on the couch because he didn't want me messing with his
12 wife when he wasn't around.

13 Q. Did you stay out of their bedroom?

14 A. I stayed in my little section of the attic.

15 Q. So you all were sharing the same bedroom?

16 A. Yes.

17 Q. Did that impact on your relationship and their relationship?

18 A. I told my mom that it was stupid. I was in college. I went
19 off to electronics college like my daddy wanted me to do instead
20 of where I wanted to go, and I was trying to work a full time job
21 and pay my mother rent and go to college at the same time.

22 And here was Eddy coming there with his wife, not giving momma
23 one penny of money, and he was there with his wife, and they would
24 do whatever they wanted to do, and she would like plunder and get
25 into things.

MR. R. WEIK ON CROSS

1 She would like touch me and I would tell her to keep her
2 hands off of me. She had some kind of fascination with me, and
3 Eddy would get mad and he would think it was my fault; that I
4 was hitting on her, but really she was hitting on me.

5 Q. Eventually did she divorce him?

6 A. Eddy and her started having problems because she couldn't
7 wash dishes, she couldn't wash clothes, she was getting real skinny
8 and he was telling her he was wanting her to work out; telling her
9 she had to do five hundred situps and pushups so she could get a
10 toned, tight body so she would look like a fashion model.

11 So eventually this girl started going to this church with these
12 holy-rollers, and they started putting notions in her head where
13 she was standing up to Eddy, and I was thinking, this is blowing
14 up in Eddy's face, and soon she'll be gone.

15 So Eddy told her to leave, but the same day she left she
16 found some guy from the rehabilitation center and she went to his
17 house and was staying with him, sleeping with him, and then Eddy
18 took her back and it happened all over again.

19 She got with another guy from the rehabilitation place who was
20 calling her at the house where we lived to go out, and Eddy finally
21 kicked her out and divorced her.

22 Q. And while the divorce was going on, he met Susan, is that
23 right?

24 A. No. Yes, that is. I was thinking of something else. The
25 year we flipped the truck over, February of 1980, we had been in

MR. R. WEIK ON CROSS

1 a bad truck accident.

2 Eddy had borrowed -- I was on crutches and I had a sports
3 car, though a standard shift, and I could not drive it. Eddy
4 had a permit and didn't have a driver's license and he had wrecked
5 an S-10 truck he had earlier.

6 Well, he borrowed my car to go see his friend, Travis Melton.
7 Travis had some job lined up and Eddy was trying to get a job and
8 that is where he met Susan at.

9 Q. Did they get married?

10 A. Eddy and Susan?

11 Q. Yes.

12 A. No, sir.

13 Q. But you said they have a supposed child?

14 A. Yes.

15 Q. Why do you say supposed in relationship to Eddy?

16 A. Well, by the time I met Susan which was two or three weeks
17 after Eddy was dating her, she was already saying she was preg-
18 nant, and I thought that was awful odd, she already saying she
19 was pregnant. I asked how she knew and she said she could feel it.

20 And I said, Eddy, you got to get out of this relationship;
21 you're going to get stuck with someone else's kid, but Eddy -- no,
22 that's my kid; that's my baby.

23 Q. Now, prior to her death, did you have some discussion with
24 Eddy about what was going on with them shortly before . .

25 A. Eddy was telling me that Daniel would come home and there was

MR. R. WEIK ON CROSS

1 no food in the house, and he had asked me a couple of times would
2 I take him to Sam's Wholesale so he could buy stuff to take over to
3 Susan's.

4 That Susan with her little cleaning jobs that didn't pay much,
5 and the money she did make she had to pay a part of some rent -- I
6 don't remember now, but she had to pay all the bills, and she had
7 like an electric and phone bill and clothes for the kids and all,
8 and she didn't really have a lot.

9 Q. Did he take food over to them?

10 A. Yes.

11 Q. Did he always take food or just this time?

12 A. He had taken food a couple of times. Even my mother had taken
13 things over.

14 Q. Okay. Did he also take some money?

15 A. Yes.

16 Q. Shortly after that, did Eddy call you again?

17 A. Eddy called me to tell me that -- there was a couple of
18 times Eddy would get Daniel and he would try to get Daniel to know
19 me. I didn't want to know Daniel because I didn't know if he was
20 my nephew or not.

21 As I was trying to put the months back together, it wasn't
22 adding up. It was like eight and a half months, and I still be-
23 lieve that Daniel -- well, Daniel may or may not be Eddy's son.

24 He was a baby so I tried to help out, and Eddy had called
25 me, saying that Daniel and him was going off for his birthday and

MR. R. WEIK ON CROSS

1 they wanted me to meet them for dinner and to meet him at the
2 house on his birthday; that Susan was going to let him have his
3 son.

4 See, he would get the boy like maybe every other weekend,
5 and she was making an exception since it was his birthday.

6 So I came over, but he wasn't there, so . . .

7 Q. What was Eddy like just before the murder, in relationship
8 to them?

9 A. He was getting aggravated because Daniel was telling Eddy
10 about how his mom and John was beating him, and John would come
11 over and he would smoke these little tiny cigarettes with his
12 mother and they would go to sleep, and momma wouldn't have nothing
13 fixed.

14 I'm like, well, you don't know if that's true. My son don't
15 lie, and Eddy would get aggravated about that. If that's going on
16 in the house -- I'm like, that's easy. If it's going on in the
17 house, call Becky, Susan's sister, and ask.

18 I said, or go talk to Mr. Hutto. I said, you don't know if
19 this child is playing you against this family. I said, I'm pretty
20 sure if this was happening somebody would get involved.

21 And he was getting really aggravated. Well, all of a sudden
22 Susan just told Eddy to stay away, and Eddy got real depressed.
23 He would sit in the house and cry.

24 To me, I just felt, you know, if you're too stupid to open
25 your eyes, you get what you . . .

MR. R. WEIK ON CROSS

1 Q. Were you over at the house having these discussions with
2 him?

3 A. Yes, I was. My mom and my daddy -- we would sit around the
4 kitchen table and Eddy would talk about it. Even Daniel -- I heard
5 Daniel in there that one night talking about how John had beat him
6 and put him in the corner; made him go to bed with nothing to eat
7 because him and Amber, the little girl, had got in a argument, and
8 he was punished.

9 Q. John was the boyfriend of Susan?

10 A. Yes, sir.

11 Q. Did you have discussions about the investigator. .

12 A. Excuse me, I can't hear you.

13 Q. Did you have the same discussions with the investigator back
14 in 1999?

15 A. Something like it.

16 Q. Did you also tell the investigator that Amy was involved in
17 some way in witchcraft?

18 A. Amy in high school, yes. She would want everybody to think
19 she was into witchcraft.

20 I had bought books on the occult to do a paper my junior year
21 because I had to turn in a term paper in English, so I did my on
22 the occult.

23 And you couldn't get books out of the library on the occult
24 at that time, and we were in a small town, so I would have to go
25 to Walden Books and I had to buy those books to do the research

MR. R. WEIK ON CROSS

1 paper.

2 So after the research paper was over, the books just sat
3 there and so Amy started taking them to school and she would sit
4 on the books and chant, so people would think she was a witch,
5 which was her way of getting attention.

6 Q. You say she would chant?

7 A. Yes, chant what was in the books.

8 Q. Did you ever see any fetuses in jars around your mother's
9 house?

10 A. No, sir.

11 Q. There were a couple of traumatic events that happened to the
12 family?

13 A. The bus wreck when some of our friends got killed but we
14 wasn't on that.

15 Q. And how did that influence your family? What was the rela-
16 tionship there?

17 A. The children -- we were all in the Boy Scouts together, these
18 children, and the Four-H Club, and the Rifle Club, which was some-
19 thing my daddy wanted us in.

20 I didn't want to be in the Rifle Club. I liked cooking, but
21 a man couldn't be into cooking, so I had to be in the Rifle Club.

22 Q. Okay.

23 A. So those children were like great friends. We played ball
24 together, soccer, wrestling, swam together.

25 Q. Sunshine's death -- how did that . .

MR. R. WEIK ON CROSS

1 A. Momma took that out on me. She didn't take it out on Eddy.

2 Q. Okay.

3 A. Sunshine was a child that demanded a lot of attention, and
4 she . .

5 Q. Who was Sunshine?

6 A. She was my niece. She was my sister, Ronda's, daughter, by
7 her first marriage.

8 She was a child that demanded attention. She was a klepto-
9 maniac.

10 If you tried to -- daddy would always tell us, you've got to
11 pay attention. So when I was in school if Sunshine got into
12 something when I got home I would be beaten because the only rea-
13 son she got into that was because she's seen you all get in it.

14 So we would be punished for what Sunshine did, so -- and I
15 would try to grab Sunshine by the arm -- you're not supposed to
16 be over here -- stop it, you're hurting me, and fall on the
17 ground, screaming, and momma would come out and beat the fool out
18 of me.

19 Q. What happened to Sunshine?

20 A. She walked out across the street and the baby sitter wasn't
21 paying attention, and these two guys were racing on motorcycles,
22 and they hit her and it turned out one of the guys -- he had stole
23 the motorcycle, and he dropped the bike and ran.

24 Q. How old was Sunshine at that time?

25 A. Eight years old.

MR. R. WEIK ON CROSS

1 Q. What was the relationship between Eddy and Sunshine at
2 that time?

3 A. Eddy had spoiled Sunshine. He called her his toogie-
4 bird.

5 Q. Did her death cause him some emotional problems?

6 A. He cried about it but, like I said, my mom --- my mom told
7 me that God took Sunshine out of the world because me and her
8 fought all the time, and it was my fault.

9 So Eddy -- every time he felt like making me feel bad, he
10 was like, you killed Sunshine, and Amy would say, yeah, you
11 killed Sunshine, just to make me feel like crap.

12 Q. What was your father's relationship with Bill Gunter?

13 A. They were naval buddies.

14 Q. Friends?

15 A. Yes.

16 Q. Did they stay friends?

17 A. Um, they didn't start drifting apart until about like five
18 years before my mother passed away or before --- actually,
19 right before Eddy -- probably before Eddy shot Susan.

20 Q. At the time of trial, did you make this information avail-
21 able?

22 A. Yes. I talked to Mr. Parker but I had not talked to anyone
23 else.

24 Q. Once again, describe what happened after the trial when
25 you met with . .

MR. R. WEIK ON CROSS

1 A. Percy Buford?

2 Q. . . Marva Hardee Thomas?

3 A. I was -- they were talking to Eddy, from what I remember,
4 because I had a bad case of indigestion that day. I sat over
5 in the corner. I was in a lot of pain.

6 They called for a recess and we went outside. It was like
7 three or four o'clock in the afternoon, and I asked Ms. Hardee
8 Thomas -- I said, when will I be called to testify; when are they
9 going to call me up?

10 She goes, the trial is all over. Your brother is going
11 to give a plea, and I said, when did this happen, and she said,
12 weren't you paying attention? He just pled guilty.

13 And I'm like, well, what was the sense of subpoenaing me
14 if you were never going to call me up during the trial, and
15 she said that the Judge wants you here to witness your brother's
16 fate in case you get any ideas about vengeance.

17 I'm like, well, that's stupid. I said, I just missed
18 work and I'm not getting paid for it.

19 So I authorized her with my records from the Kennedy Cen-
20 ter and Dorchester Drug Rehabilitation if they would be helpful
21 in Eddy's case.

22 She goes, you're not on trial, and besides, your brother
23 just give a plea. It's out of our hands.

24 Q. You talked about the Boy Scouts?

25 A. Yes.

MR. R. WEIK ON CROSS

1 Q. Was your brother involved with his son in the Boy Scouts?

2 A. He was involved with him in the Cub Scouts.

3 Q. Okay.

4 A. Tell us about that.

5 A. He went and became a den leader, to my knowledge. I know
6 he had talked about that, but I have no knowledge if he did it
7 or not.

8 He had asked me because I was working with the American
9 Indians if I would do it, and I went, I have enough on my plate
10 after this.

11 Q. Now, your brother was also fired from Broyhill, was he
12 not?

13 A. Yes, sir.

14 Q. Why was he fired? Do you recall?

15 A. There was the manager there, and he had -- he would like
16 blow everybody's hopes up. He really liked Eddy, but we found
17 out later that the manager was bisexual.

18 Now, he was filling Eddy's head up that Eddy would be
19 manager one day, and he was getting Eddy to tatttle on the other
20 employees, to tell him what was going on in the daytime -- in
21 the nighttime -- excuse me.

22 He would report to him in the day time and that way he
23 would know who was goofing off, who was leaving the plant.

24 Eddy even told on Donald, that Donald was sneaking off
25 from the plant, going to see his girlfriend for six hours and

MR. R. WEIK ON CROSS

1 then coming back to the plant with alcohol on his breath.

2 Eddy ratted out a lot of people, just so Eddy could
3 move up the ladder and hopefully be a manager, and Eddy was
4 like, when I'm a manager, I'm going to fire you; you are
5 going to lose your job.

6 Q. When did he get fired? Why was Eddy fired?

7 A. Well, the manager found another kisser and he put that
8 man over Eddy, and that man knew what Eddy was doing and he
9 started making Eddy's life hell.

10 He would go out of his way to pick on Eddy or say he
11 was not producing enough work; going to the bathroom too many
12 times. I mean, he was really riding Eddy.

13 Then Eddy was jealous because he had the job Eddy was
14 supposed to get.

15 Q. What happened when Eddy got fired?

16 A. The guy got in Eddy's face. I wasn't there but this is
17 what the employees told me they had witnessed.

18 The guy got in Eddy's face and took his finger and started
19 poking Eddy in the chest, and Eddy said, if you touch me one
20 more time I will break your fricking neck, and the guy poked at
21 him.

22 And supposedly from what the employees said, Eddy grabbed
23 him. Eddy told me he never laid a hand on him, but it was some
24 little discussion, and Eddy was fired for threatening the guy,
25 I believe.

MR. R. WEIK ON CROSS

1 Q. Did you tell that to the investigator?

2 A. I believe so, at that time. Like I said, I wasn't there
3 to see it, so I really don't know if it's true or it's not.
4 I know what Eddy told me. I know what the other employees told
5 me.

6 And then the guy who actually was threatened told me Eddy
7 told him--- got real violent with him and said he was going to
8 go out to his car and get a gun and stuff like that.

9 Q. Thank you very much. I have no further questions.

10 THE COURT: Redirect?

11 MR. O'CONNELL: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. O'CONNELL:

14 Q. You talked about you stabbed your brother under the arm,
15 is that right?

16 A. Yes, sir.

17 Q. What taught you to do that?

18 A. My father.

19 Q. Why under the arm?

20 A. Because you come up underneath the arm pit and it is right
21 above the lower ribs or where the ribs begin. There is an open-
22 ing that leads straight to the heart.

23 With the appropriate knife blade you can reach the heart.

24 Q. How long did your brother work for Broyhill before the inci-
25 dent you told us about?

MR. R. WEIK ON CROSS

1 A. . .

2 THE COURT: I'm sorry. Before the incident what?

3 MR. O'CONNELL: Before the incident with the coworker he told
4 us about.

5 A. He had put in seven years there, or seven and a half to eight
6 years there.

7 BY MR. O'CONNELL:

8 Q. And you worked there at the same time?

9 A. Yes, sir.

10 Q. Was -- what sort of employee was he?

11 A. He was a loyal employee. He'd be there early every day and
12 stay there late at night. He'd work on his own time and volun-
13 teer for the greasiest job.

14 He'd go and wash the machines -- bring buckets of water and
15 everybody else would laugh at him.

16 He had a machine that he'd take and scrub it, and he'd work
17 to get his job done and then scrub the machine down.

18 And I was like, why would he want to do that? It's just
19 going to get sawdust on it again, but he took real pride in that.

20 Q. Thank you. I have nothing further.

21 THE COURT: Recross, limited to Redirect?

22 MR. ZELENKA: Nothing, Your Honor.

23 THE COURT: Do you wish to excuse him, counsel?

24 MR. O'CONNELL: Excuse him.

25 THE COURT: Any objection?

MR. R. WEIK ON CROSS

1 MR. ZELENKA: No objection.

2 THE COURT: You may step down, and you are excused.

3 (Witness excused)

4 THE COURT: Call your next witness.

5 MR. O'CONNELL: Dr. Morgan.

6 (Discussion between counsel and the Court concerning schedul-
7 ing)

8 THE COURT: I'm going to stop at this time for your lunch. The
9 Court stands adjourned for your lunch hour. Thank you very much.

10 (Whereupon, the Court stood adjourned for the lunch period and
11 then resumed)

12 THE COURT: Is the Applicant ready to proceed?

13 MR. O'CONNELL: Yes, sir.

14 THE COURT: Respondent ready?

15 MR. ZELENKA: Yes, sir.

16 THE COURT: Let the record reflect that all parties are pre-
17 sent. Call your next witness, please.

18 MR. O'CONNELL: Dr. Morgan.

19 DONALD WILLIAM MORGAN, being duly sworn,
20 testified as follows:

21 THE COURT: If you would speak into the microphone, please,
22 and state your full name for the record, spelling your last
23 name

24 WITNESS: Donald William Morgan, M O R G A N.

25 THE COURT: Your witness, counsel.

1 DIRECT EXAMINATION

2 BY MR. O'CONNELL:

3 Q. Dr. Morgan, you are a psychiatrist?

4 A. That's right.

5 Q. Would you give us a little of your educational and pro-
6 fessional background, please?

7 A. I graduated from the University of Pennsylvania in 1956
8 with a degree in mathematics. I graduated from the University
9 of Buffalo School of Medicine in 1960, with a degree in -- as an
10 M.D.

11 I did a rotating internship at Triple Army Hospital and I
12 did a three year residency in psychiatry at Walter Reed Army Hos-
13 pital.

14 I then went to Downstate Medical Center in Brooklyn, New
15 York, and got a degree in research psychiatry.

16 Q. And would you tell the Judge about since you got the degree
17 you just spoke about -- what you did after that professionally?

18 A. I went back to Walter Reed where I was at first Chief of
19 Psychiatry and then Chief of the Department of Psychiatry until I
20 retired in 1980.

21 Q. Was that from the United States Army?

22 A. Right.

23 Q. All right.

24 A. And then I came here to teach at the University of South
25 Carolina, where I'm a Distinguished Professor.

DR. MORGAN ON DIRECT

- 1 Q. Are you still actively teaching, or are you Emeritus?
- 2 A. I'm there at this point to teach.
- 3 Q. During your time at the University of South Carolina, what
- 4 areas of psychiatry were you involved in?
- 5 A. I initially was in general psychiatry. I then was asked to
- 6 begin a program in forensic psychiatry because I had some ex-
- 7 perience at Walter Reed in similar kinds of cases.
- 8 Q. Have you testified previously and been qualified as an ex-
- 9 pert in the State Courts of South Carolina?
- 10 A. Yes.
- 11 Q. And you have testified in Federal Court as well?
- 12 A. Yes.
- 13 Q. And you have been qualified as an expert?
- 14 A. Yes.
- 15 Q. Have you specifically testified in death penalty cases?
- 16 A. Yes.
- 17 Q. In the Courts of South Carolina?
- 18 A. Yes.
- 19 Q. How many death penalty cases do you think you have testi-
- 20 fied in in South Carolina as a forensic psychiatrist?
- 21 A. Well, I had to add them up. At that time it was sixteen,
- 22 and then I've had probably two cases after that.
- 23 Q. Have you also testified in non-death penalty criminal
- 24 cases in South Carolina?
- 25 A. Oh, yes.

DR. MORGAN ON DIRECT

1 Q. And have been qualified as well?

2 A. Yes.

3 MR. O'CONNELL: Your Honor, I would proffer Dr. Morgan as an
4 expert.

5 THE COURT: Any objection as to qualifications?

6 MR. ZELENKA: No objection.

7 THE COURT: So qualified and without objection.

8 You may proceed.

9 BY MR. O'CONNELL:

10 Q. Dr. Morgan, you were involved -- became involved in this
11 case in 1999?

12 A. That's right.

13 Q. How did you become involved in it?

14 A. I was called in by Dr. Watts, and she asked me would I
15 examine the Defendant and whether or not his problems rose to
16 the degree that he could plead not guilty by reason of insanity.

17 Q. Now, why would Schwartz-Watts -- is she someone you have --
18 had you formerly had an association with her?

19 A. Yes. I had known Dr. Schwartz-Watts since she was a first
20 year medical student.

21 Q. Was she one of your students?

22 A. Yes.

23 Q. Prior to examining Mr. Weik -- this was done in 1999, you
24 say?

25 A. This was done in 1999.