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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2017-000211

STEPHEN C. STANKO #6022.....PETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

APPENDIX

VOLUME 7 OF 9

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GERALD KELLY - DIRECT BY MS. VANN

1 Q: What did their involvement entail?

2 A: Well, their involvement entailed at time of trial that
3 they -- outside of the courtroom, they had a whole bank of
4 people with televisions, video machines, and whatnot,
5 telephones. They were out of the hearing of the courtroom.
6 Inside the courtroom, they had boxes with glass fronts that
7 had cameras in them, and I assume they had microphones.

8 Q: Do you feel that their involvement affected the trial in
9 any way?

10 A: Oh, I think without a doubt it affected the trial in
11 some ways. I did receive a call from one of the producers
12 myself. He called me at my office unexpectedly and told me
13 who he was -- this was before time of trial -- and asked me
14 had I ever heard of *48 Hours*. And not being under oath, I
15 told him no. And he said, well, perhaps I should talk to Mr.
16 Diggs, and I said that's a very good idea. And that's the
17 only contact I ever had with them, and I've never had -- and
18 I don't think it's a good practice to include the press if
19 they are in any way obtrusive in the courtroom.

20 Q: And why is that?

21 A: Well, because it shifts the focus. It makes the judge
22 self-conscious and the clerk, everybody.

23 Q: I'd like to shift focus just a little bit to the jurors
24 in this case. If you had known that one of the jurors knew a
25 police officer who was testifying against Mr. Stanko, would

GERALD KELLY - DIRECT BY MS. VANN

1 that have changed how you had assessed the juror in voir
2 dire?

3 A: I would have examined them and if I found that they were
4 friends or that they could in any way be influenced, I would
5 strike them.

6 Q: And if you had known that one of the jurors had a child
7 who went to school with Ms. Ling, a daughter who went to
8 school with Ms. Ling, would that have changed how you
9 assessed the juror during voir dire?

10 A: I would've examined them had I known that and if I had,
11 again, felt that there was any influence there, I would've
12 discussed it with Diggs, but if there had been any difference
13 of opinion, I would've forced the strike.

14 Q: Is it possible you would even move to strike for cause a
15 juror with that kind of knowledge?

16 A: Sure. That would be the first thing to do.

17 MS. VANN: Court's indulgence.

18 THE COURT: Yes, ma'am.

19 MS. VANN: I have no further questions. Thank you, Mr.
20 Kelly.

21 THE WITNESS: May I be excused?

22 THE COURT: No, sir. We've got cross-examination.

23 THE WITNESS: Oh, okay. Thank you, Your Honor.

24 THE COURT: And then possibly redirect and recross, and
25 then I'll excuse you. How about that?

GERALD KELLY - CROSS BY MS. SCRANTOM

1 THE WITNESS: As you wish.

2 THE COURT: All right. Cross-examination, please.

3 MS. SCRANTOM: May it please the Court, Your Honor.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 BY MS. SCRANTOM:

7 Q: Good morning, Mr. Kelly.

8 A: Good morning, ma'am.

9 Q: My name is Caroline Scrantom and I'm with the Attorney
10 General's Office. And I'm not sure that we've had the chance
11 to meet anytime recently, but thank you for being here today.

12 Could you turn back to page 3389 of that trial
13 transcript for me?

14 A: Yes.

15 Q: And I believe you just read up to about line 11 of that
16 page. Would that be correct?

17 A: From 5 to 11.

18 Q: Could you please read for the Court today lines 12 of
19 that page through line 16 of the following page, which is
20 page 3390?

21 A: There are some guidelines in considering statutory
22 aggravating circumstances, mitigating circumstances, in
23 reaching your verdicts on the penalty of this case. Judge
24 Jefferson will review those guidelines with you in the course
25 of her charge.

GERALD KELLY - CROSS BY MS. SCRANTOM

1 However, I want to give you a brief roadmap of my own so
2 you can begin thinking. You can start the -- at least
3 understanding the process of how you are to reach this
4 verdict, how you are supposed to answer the questions.

5 First, and this is a must, there is a requirement under
6 South Carolina law. The first question for you to answer in
7 this case -- in this part of the case are there -- are there
8 any statutory aggravating circumstances? Because if you
9 don't find any statutory aggravating circumstances, then the
10 death penalty is not appropriate and it would be your duty --
11 it would be your responsibility to say no statutory
12 aggravating circumstances, life without parole. That's --
13 that's the right answer if you find no statutory aggravating
14 circumstances.

15 Is that far enough or more?

16 Q: Could you read just the next paragraph for me, please?
17 Thank you.

18 A: However, if you find the existence of at least one --
19 one is the -- only one is required. If you find the
20 existence of at least one statutory aggravating circumstance,
21 then it is your responsibility to consider all the other
22 evidence, all the circumstances, the mitigating
23 circumstances, everything, and to reach a verdict regarding
24 the penalty that is just, a verdict of life without parole or
25 death.

GERALD KELLY - CROSS BY MS. SCRANTOM

1 Q: Thank you, Mr. Kelly. And in your opinion as Mr.
2 Stanko's trial attorney, was there something objectionable
3 about that portion of the State's closing argument?

4 A: There was nothing objectionable.

5 Q: Do you believe that was an adequate reflection of South
6 Carolina law on this issue?

7 A: I do.

8 Q: Thank you, Mr. Kelly. Now, you described yourself as
9 the fact -- the fact man as far as the attorneys who were on
10 Mr. Stanko's capital trial team; is that correct?

11 A: For the lack of a better way.

12 Q: Would you have created a biography of Mr. Stanko in
13 preparing for the mitigation phase of this case?

14 A: We did.

15 Q: And have you reviewed any of the trial testimony before
16 your appearance here today?

17 A: No.

18 Q: Would you consider yourself to have a good recollection
19 of the mitigation case that you presented at trial?

20 A: The part that I was dealing with, yes.

21 Q: Do you remember presenting Mrs. Connie Price as a
22 witness in the penalty phase?

23 A: Yes.

24 Q: What do you remember about Mrs. Price?

25 A: Well, it's been 13 years. I remember that Connie was --

GERALD KELLY - CROSS BY MS. SCRANTOM

1 I forget exactly what her situation was, but she had evidence
2 that would show I felt clearly his mental illness, and it
3 showed really what -- a part of the history of what took
4 place, kind of the stress that was building on him. And it
5 showed that -- I think as far as she was concerned, it showed
6 that she was a citizen of good character and of a good heart.
7 She was a generous person and didn't hold even a grudge
8 against Stanko.

9 Q: Was Ms. Price one of the victims of a scheme or some
10 type of con by Mr. Stanko?

11 A: Everybody was.

12 Q: When you refer to everybody, do you mean a number of
13 people that you would have presented in furtherance of the
14 penalty phase?

15 A: Everybody that we knew of that Stanko dealt with was
16 involved in some kind of illusion that he was creating.

17 Q: And did the State present a series of witnesses who
18 would've been the victims of these previous cons and schemes?

19 A: Yes. In fact, some that we did not discover.

20 Q: Okay. And would they have presented that in the penalty
21 phase?

22 A: They may have.

23 Q: Do you recall putting forward one or two of Mr. Stanko's
24 previous teachers from high school in Goose Creek?

25 A: I do not recall.

GERALD KELLY - CROSS BY MS. SCRANTOM

1 Q: Would you recall from your mitigation investigation that
2 Mr. Stanko was a model student of sorts?

3 A: Yes. I think that basically he was.

4 Q: Would you recall putting forward any of Mr. Stanko's
5 neighbors in the penalty phase?

6 A: I don't recall putting any forward.

7 Q: Do you recall whether Mr. Stanko had anything
8 extraordinary about his family history growing up that stuck
9 out to you?

10 A: The thing that I remember most was the alienation from
11 his father. His father was dominating, and his father drove
12 a wedge between the women of the family and Stanko. He
13 didn't want him around. He wanted him out. He didn't
14 support him. He didn't help him when he got out of prison.
15 He didn't try to help him through.

16 Q: Do you recall reviewing Mr. Stanko's birth records that
17 were produced as part of your investigation?

18 A: I remember talking and looking at them. I didn't study
19 them. We passed them on to Mr. Diggs. We thought they were
20 important.

21 Q: Do you recall if Mr. Stanko's family was available for
22 the Georgetown trial?

23 A: They would not make themselves available.

24 Q: So you did investigate meeting with the family?

25 A: Absolutely. Ms. Davis went to their home and met with

GERALD KELLY - CROSS BY MS. SCRANTOM

1 the mother and the sister, and they said we can't do that.

2 And we tried. We reached them during the time of the trial

3 and tried to get them to come to the -- the penalty phase.

4 They would not do that.

5 Q: Do you recall testifying in 2015 in this courthouse at
6 Mr. Stanko's initial PCR hearing?

7 A: Yes.

8 Q: Do you recall if you saw Stanko's family here at that
9 time?

10 A: No. They weren't here, I don't believe, that I know of.
11 They never came forward to help him.

12 Q: Do you recall getting any records or any histories from
13 people in Mr. Stanko's life about him being hit in the back
14 of the head with a bottle, either a full beer bottle or soda
15 bottle or something like that?

16 A: Right. Davis uncovered that. She was mitigation. She
17 found what was there and she found that.

18 Q: Do you recall what the facts of that encounter were?

19 A: No, I do not, but I do know that we passed that on so it
20 could get to the doctors. I don't think they used it. I'm
21 not sure.

22 Q: Do you recall Dr. Sachy testifying during the penalty
23 phase about the previous hit with the beer bottle?

24 A: He may well have.

25 Q: Speaking of Dr. Sachy, do you recall him testifying

GERALD KELLY - CROSS BY MS. SCRANTOM

1 during the penalty phase about what someone with a
2 personality disorder diagnosis, like he diagnosed Mr. Stanko
3 with, how they would perform in a prison environment?

4 A: I don't recall, but if he did -- I would be surprised
5 had he not, but I don't specifically recall it. All of that
6 was done by Mr. Diggs.

7 Q: Do you recall anything remarkable about the way Mr.
8 Stanko grow up -- grew up? Excuse me. For example, did he
9 grow up in an abusive household?

10 A: Other than a strict father, I don't know of any abuse.

11 Q: Am I correct you are recalling that his father was in
12 the Navy?

13 A: I believe he was, and that's why Stanko was born in
14 Havana.

15 Q: Do you recall anything about Mr. Stanko growing up in an
16 extremely impoverished condition of any sort?

17 A: I don't recall that. If it -- if it was, then Davis
18 found it and it was passed on.

19 Let me make myself clear. If it had to do with the
20 facts of the crime, things that took place in Georgetown
21 County, I had to do with it. If it had to do with anything
22 medical or anything of that type that you could call medical,
23 we just passed anything on. We didn't do anything with it.
24 Diggs did not want us be -- us involved in it -- in his side.

25 Q: So what are the facts that you were confronted with

GERALD KELLY - CROSS BY MS. SCRANTOM

1 then, Mr. Kelly, in which you had a defendant -- correct? --
2 who had just been released from prison after serving about 8
3 1/2 years?

4 A: Something like that.

5 Q: And do you recall the facts of the offenses for which he
6 had previously served time?

7 A: Yes, I do.

8 Q: Can you explain to the Court what those were?

9 A: Well, I found out from the victim herself because she
10 was called as a witness and I cross-examined her, and she's
11 the one who told me. Of course, I got information from
12 Davis, but I cross-examined her closely about what she
13 claimed had taken place.

14 Q: And was that that Mr. Stanko was living with her at the
15 time as kind of a common -- common-law husband?

16 A: Yes. It was similar to the history in Georgetown County
17 in the sense that he was unable to cope on an economic level.
18 He couldn't hold a job. He had to rely on others for a place
19 to live, and he relied on her.

20 And that the -- he became, in her case, demanding, and
21 that was a quality that he exhibited as the stress mounted on
22 him. As he became stressed out and as he became demanding,
23 those of whom he was demanding were telling him you've got to
24 go. You've got to pull back. Who do you think you are?
25 That kind of thing. And instead of pulling back, it ignited.

GERALD KELLY - CROSS BY MS. SCRANTOM

1 Q: Based on these facts, did that assist in your
2 development of a mitigation theory?

3 A: My theory was exactly what happened, the history of it.
4 He came out. He didn't have any place to go. He -- he
5 didn't know how to cope with it. You'd have to go to some
6 kind of state or county agency and say do I fit your criteria
7 for help because I don't have any place to live. I can't
8 find a job. I'm fresh out of prison. And see if you can
9 find some help or aid, try to get yourself a foothold and
10 pull yourself out. That's the only way out.

11 Otherwise, you've got to go to your probation officer
12 and say I'm drowning here. I can't find anything. Do
13 something. Help me. Otherwise, you are going to go back in.

14 Q: But instead, during that period of time, he was running
15 a series of cons on local people; is that correct?

16 A: You mean in this county?

17 Q: Yes. In the crimes leading -- in the time leading up to
18 the crimes that were committed in Georgetown County?

19 A: There came a time in his history, according to our
20 discovery, that he began to attempt to manipulate the people
21 around him in order to gain advantage, usually small economic
22 advantage of some type.

23 Q: Did your investigation uncover some facts that led you
24 to believe that Mr. Stanko was about to be found out?

25 A: Well, it was already breaking down. He had made

GERALD KELLY - CROSS BY MS. SCRANTOM

1 promises that he was not fulfilling. He had taken money to
2 fulfill promises, and they were beginning to check on him.

3 And he had told people I work for a law firm. In fact,
4 he told them that he worked for several different law firms,
5 different people, different law firms. They were starting to
6 call them. Some of the people were calling the -- the -- the
7 Sheriff's Office or the local police department saying I've
8 got -- what do I do? I've got a guy who's cheating me. It
9 was coming apart at the seams.

10 Q: Did you recall presenting a few of those types of
11 witnesses during the penalty phase?

12 A: I tried to expose it every time it showed up. There
13 were people who the State presented that we did not discover.
14 Stanko concealed his activities from us. We had to find out
15 without him. He'd say he didn't know who these people were.
16 He didn't know who they were.

17 Q: Do you mean to say that Mr. Stanko was not forthcoming
18 with you in the assistance of preparing your defense?

19 A: That's exactly what I'm saying.

20 Q: Do you recall putting forward a series of assistant
21 solicitors who had been on call on the days leading up to the
22 Ling incident who would've testified about receiving
23 complaint calls about the schemes that Mr. Stanko was
24 running?

25 A: Well, yes. We were willing to put that up because we

GERALD KELLY - CROSS BY MS. SCRANTOM

1 wanted to show that the government was not responsive to the
2 citizens. They weren't responsive. Had they stepped in,
3 they could've stopped Stanko right off the bat.

4 We felt -- I felt like it was small, but it was
5 something that might turn a juror because he wasn't receiving
6 any help, and the police, the Sheriff's Department, whoever
7 it happened to be, they weren't reacting to it. If they'd
8 have stepped in, they'd have stopped him.

9 Q: Do you recall the three Georgetown County Detention
10 Center employees who were called in the mitigation phase?

11 A: I do.

12 Q: Do you recall developing a prison adaptability theory to
13 put forward through those witnesses?

14 A: No. I was not a part of that.

15 Q: So that's something that Mr. Diggs would've been
16 responsible for?

17 A: If it was done, he was responsible for it.

18 Q: Do you --

19 A: Mr. Diggs made it clear, once again, that that was not
20 anything that I, as second chair, or my investigators were to
21 get involved with. That was all his to deal with. He'll
22 tell you that himself.

23 Q: Did you present Dr. Evelyn Califf as a social worker to
24 testify?

25 A: I'm not sure whether I did or not.

GERALD KELLY - CROSS BY MS. SCRANTOM

1 Q: Did you pass along records to Dale Davis to go to a
2 social worker?

3 A: Dale would come to me and say I've covered this -- I've
4 uncovered this, and I'd say run it to the ground, find out
5 what -- tell me what you find. And if -- if -- if they
6 thought it was -- sometimes it happens as you go into death
7 penalty, if you've got investigators, things are happening
8 all the time. You are finding out things every hour that you
9 didn't know before, especially in Stanko's case.

10 I had two of the best that have ever done that job, and
11 so I would put them onto it. I didn't have to put them onto
12 it. They knew it when it arose, and so Dale Davis is a
13 mitigation investigator who is absolutely supreme. I've
14 never seen anybody who could do it better than she could.
15 And Vicki Childs was like a hound. Once she picked up the
16 spore, she brought it to the ground.

17 Q: So were you aware that a social worker had been retained
18 to testify in this case?

19 A: I'm not sure. Who is it, if I may ask? Who retained
20 her?

21 Q: Well, do you recall that Dr. Evelyn Califf testified in
22 this case?

23 A: Did I examine her?

24 Q: I'm asking if you recall her testimony?

25 A: I don't recall it. You'd have to remind -- give me

GERALD KELLY - CROSS BY MS. SCRANTOM

1 something to remind me. I'm willing to -- and when I'm in a
2 mode like that, I can cross-examine anybody who gets up
3 there.

4 Q: But you were aware that a mitigation investigation was
5 being conducted; correct?

6 A: Absolutely.

7 Q: And in your opinion, it was incredibly thorough?

8 A: Yes.

9 Q: And that was being conducted in order to prepare a
10 mitigation case at Mr. Stanko's trial?

11 A: Well, we didn't know whether Diggs was going to use it.
12 I was going to put in what we found as facts and try to tie
13 it together.

14 A split defense is like a house divided against itself.
15 It has a hard time standing. You've got to try to unify.
16 The man is no different from the theory. One reflects the
17 other.

18 That's what convinces the jury. That's what persuades
19 them, the reasonableness of the facts presented and that they
20 are to the point of what is being decided. That's the
21 foundation of persuasion.

22 MS. SCRANTOM: I beg the Court's indulgence, Your Honor.

23 THE COURT: Yes.

24 MS. SCRANTOM: No further questions. Thank you, Mr.
25 Kelly.

GERALD KELLY - REDIRECT BY MS. VANN

1 THE COURT: Any redirect?

2 MS. VANN: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. VANN:

5 Q: Mr. Kelly, do you have any recollection of a social
6 worker named Evelyn Califf working on the case?

7 A: I'm really not sure.

8 Q: If a social worker had been called to testify, would
9 that have been part of your division of responsibilities with
10 --

11 A: No, it would not. If it had been mine, I would -- I
12 would know it. I might've examined her myself, but I don't
13 know.

14 Q: Okay. Did you ever consider calling any sort of expert
15 to testify about Mr. Stanko's schemes within the context of
16 his life history?

17 A: No. The -- that would be something that you'd expect
18 the doctors would want to know because it's -- it's the
19 symptoms of this illness, but nobody as I know was really
20 interested in it. I don't think there was any nexus between
21 the fact and mitigation investigation led by me and the
22 preparation of the medical testimony, except just by
23 happenstance.

24 MS. VANN: Thank you. We have nothing further. Thank
25 you.

GERALD KELLY - RECROSS BY MS. SCRANTOM

1 THE COURT: Anything further?

2 MS. SCRANTOM: Briefly, Your Honor.

3 RECROSS-EXAMINATION

4 BY MS. SCRANTOM:

5 Q: Mr. Kelly, you mentioned that you didn't believe there
6 was a nexus between the fact investigation that you were
7 preparing for trial and Mr. Diggs' medical investigation; is
8 that correct?

9 A: No. That's not what I said.

10 Q: Could you please explain why you don't believe that
11 there was a nexus?

12 A: Well, because I never set down with him. He was never
13 interested in my side of the case.

14 Q: And by him, do you mean Mr. Diggs? I'm sorry.

15 A: I mean Mr. Diggs.

16 Q: Okay.

17 A: I mean Diggs and I did -- Diggs didn't say I want you to
18 meet with these doctors, have the investigators, let's get
19 around a big table and see if they're interested in anything
20 you've got. None of that happened at all. We offered it to
21 him, but he was uninterested in that side of the case. I
22 believe that he felt, from what he told me, that he thought
23 he would carry the case on the examination of his -- Stanko's
24 brain.

25 Q: And do you recall there being an overlap between the

GERALD KELLY - RECROSS BY MS. SCRANTOM

1 witnesses and the information that was, in fact, presented
2 between the guilt and penalty phases?

3 A: Say again?

4 Q: Do you recall there being an overlap between the
5 witnesses who testified in the two phases of the trial?

6 A: The doctors said pretty much the same thing but in a
7 shorter version, as I remember.

8 Q: And do you recall the doctors diagnosing Mr. Stanko with
9 a personality disorder?

10 A: I believe they did.

11 Q: And do you recall the doctors discussing medical reasons
12 that he would have the diagnoses of the personality disorder?

13 A: I remember it, yeah. Some of it.

14 Q: And do you recall that type of information being re-
15 presented during the penalty phase?

16 A: I believe it was.

17 MS. SCRANTOM: Thank you. No further questions.

18 THE COURT: Thank you, sir. You may step down, Mr.
19 Kelly.

20 THE WITNESS: Thank you, sir.

21 MS. VANN: He is also under subpoena. May he be
22 released?

23 THE COURT: Any objection?

24 MS. SCRANTOM: No objection.

25 THE COURT: Sir, you are released from your subpoena.

1 You have no further responsibility here. You are free to go.
2 Have a nice day.

3 THE WITNESS: Thank you, sir.

4 MR. ANDERSON: Judge, may we approach?

5 THE COURT: Yes, sir.

6 (WHEREUPON, a bench conference was held as follows.)

7 MR. ANDERSON: Judge, this next witness -- this next
8 witness, we're going to put some exhibits in through him and
9 we anticipate it will take a while, if you want to go to an
10 early lunch.

11 THE COURT: That's fine. Is that Mr. Diggs? Okay. How
12 long do y'all want to break for lunch?

13 MR. ANDERSON: An hour? What your court reporter wants
14 to do, Judge. Excuse me.

15 THE COURT: All right, 1:45. It's 12:24.

16 MR. ANDERSON: So 1:45?

17 THE COURT: Yeah.

18 MR. ANDERSON: Yes, sir.

19 MS. VANN: Thank you.

20 (WHEREUPON, the bench conference ended and the
21 proceedings resumed as follows.)

22 THE COURT: All right. What we're going to do now is
23 we're going to break for lunch at this point. We will resume
24 at 1:45 -- at 1:45.

25 (WHEREUPON, there was a break in the proceedings from

WILLIAM DIGGS - DIRECT BY MR. ANDERSON

1 12:24 p.m. until 1:46 p.m., after which the proceedings
2 resumed as follows.)

3 THE COURT: All right. Is the State ready to proceed?

4 MS. SCRANTOM: Yes, Your Honor.

5 THE COURT: The applicant?

6 MR. ANDERSON: Yes, sir, Your Honor.

7 THE COURT: Call your next witness, please.

8 MR. ANDERSON: Judge, if it please the Court, we'd call
9 William Diggs.

10 THE CLERK: Place your left hand on the Bible and raise
11 your right hand. Do you solemnly swear or affirm that the
12 testimony you are about to give is the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Please be seated and then state
16 and spell your name for the record.

17 THE WITNESS: My name is William Isaac Diggs, I-s-a-a-c
18 D-i-g-g-s. I go by Bill.

19 WILLIAM DIGGS, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ANDERSON:

23 Q: Bill, I was getting ready to say you go by Bill?

24 A: Yes.

25 Q: Is that right?

WILLIAM DIGGS - DIRECT BY MR. ANDERSON

1 A: Yes.

2 Q: Bill, you worked on the Stephen Stanko case in both
3 Georgetown as well as in Horry County or Conway?

4 A: Yes, sir.

5 MR. ANDERSON: Judge, may I approach the witness?

6 THE COURT: Yes, sir.

7 BY MR. ANDERSON:

8 Q: Bill, that's a copy of what I think is your timesheet
9 that you used in this case. Do you recognize that?

10 A: I recognize my signature.

11 Q: Does that appear to the best of your recollection a fair
12 and accurate report?

13 A: I would say yes.

14 Q: It appears that on page 1 you were appointed to this
15 case on August the 30th of 2005; is that right?

16 A: Where are you looking at? I think that's -- that sounds
17 correct, but I'm --

18 Q: On page 2. I'm sorry.

19 A: Oh, I'm sorry.

20 Q: Well, you've got number 1 on the bottom of page --

21 A: Okay.

22 Q: -- 2.

23 A: Yes. Yes.

24 Q: August 30th, 2005, you were appointed by, I guess, Judge
25 Jefferson?

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1 A: Correct.

2 Q: Okay. And it appears that your timesheet, if that's
3 page 1, is 13 pages long?

4 A: Yes.

5 MR. ANDERSON: Judge, I'd move at this time to admit
6 that as Appellant's 6.

7 THE COURT: Any objection?

8 MS. SCRANTOM: No objection, Your Honor.

9 THE COURT: Without objection, so admitted.

10 (WHEREUPON, Plaintiff's Exhibit Number 6, Diggs
11 timesheet, was admitted into evidence.)

12 BY MR. ANDERSON:

13 Q: Now, Bill, you were licensed in North Carolina and South
14 Carolina; is that right?

15 A: Yes.

16 Q: And then later, through some unfortunate events, you
17 were disbarred in both North Carolina and South Carolina?

18 A: Yes.

19 Q: You were lead counsel in this case?

20 A: Yes.

21 Q: Now, let's talk about some of your background, if we
22 can. You started off with Appellate Defense?

23 A: Well, I did work in Appellate Defense. I didn't start
24 there.

25 Q: Okay. Where did you start?

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1 A: In Charlotte.

2 Q: Charlotte?

3 A: Uh-huh.

4 Q: Is that why you, I guess, were licensed in North
5 Carolina?

6 A: Yes.

7 Q: Okay.

8 A: In fact, I took both of those bar exams in the same
9 week.

10 Q: One was enough for me.

11 A: And I passed both of them the same week. I did the
12 multistate on Wednesday. We did Monday and Tuesday in
13 Raleigh. We did multistate in Raleigh on Wednesday and in
14 South Carolina in Columbia Thursday and Friday.

15 Q: Outstanding. At some point in time, you worked with
16 Appellate Defense here in South Carolina?

17 A: From 1981 to 1989.

18 Q: And at some point in time, I guess, you had worked your
19 way up from -- and I don't mean just from being a regular
20 lawyer, I guess, to a chief lawyer?

21 A: I became chief attorney, acting chief attorney, in 1984
22 and about a year after that became chief attorney until I
23 retired from there in 1989.

24 Q: And then when you left in 1989, did you go into private
25 practice?

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1 A: I came to Myrtle -- Myrtle Beach, yes.

2 Q: And you were still actively practicing in North Carolina
3 also?

4 A: Yes, but mostly in South Carolina.

5 Q: When you worked with Appellate Defense, did you ever do
6 any, I guess, death penalty cases?

7 A: Yes.

8 Q: When you -- when I say you did them, you handled the
9 appeals for them?

10 A: Yes.

11 Q: When you handled the appeal, did you review the entire
12 --

13 A: Of course.

14 Q: -- transcript?

15 A: Yes.

16 Q: So prior to going out in private practice, would it be
17 fair to say that you were very familiar with how death
18 penalty cases were handled?

19 A: I would say so.

20 Q: How many death penalty cases do you think you did while
21 you were with Appellate Defense?

22 A: I personally did, that I recall, four direct appeals.

23 There were at least three other cert petition cases that I've
24 dealt with in the US Supreme Court. We argued the Gathers
25 case in the US Supreme Court. And all of those would have

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1 predated the trial work I did.

2 Q: Okay. Now, when you went into private practice, of
3 course, you handled some death penalty cases as well; is that
4 right?

5 A: Correct.

6 Q: How many do you think you handled? Probably four or
7 five?

8 A: I remember it was four or five. I remember four
9 specifically, which was Rebecca Smith twice, Marion Smith
10 here in Georgetown, and Boyd Meekins in Horry County.

11 Q: Were you lead counsel on any of those?

12 A: Meekins and Marion Smith.

13 Q: So you were familiar with, I guess, lead counsel
14 responsibilities?

15 A: Yes.

16 Q: When you were appointed by Judge Jefferson, any idea why
17 she appointed you?

18 A: If I remember correctly, it was simply she wanted -- it
19 was not long after we had done the Marion Smith case here and
20 the Boyd Meekins case in Horry County. She was looking for
21 someone that would represent Stephen, if not aggressively,
22 but, you know, someone who would commit to doing that, and I
23 think that's why I was appointed. It was the timing on the
24 case and the results of those other two cases.

25 Q: So you had had some, I guess, experience with her as far

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1 as death penalty cases were concerned?

2 A: I don't -- I don't know if I had experience with her. I
3 think she did a survey of, you know, attorneys in the area
4 that might be available to do it. I think she did it not
5 based on her conversations with me, but a survey that she
6 conducted.

7 Q: Did she ever indicate to you that she wanted you to do
8 it because of how she saw the case?

9 A: No.

10 Q: Okay.

11 Q: When was Gerald Kelly appointed? Do you remember?

12 A: He was appointed after I was appointed, if I recall. I
13 did not know Gerald at the time. I assume she used the same
14 process with him.

15 Q: Did you ask for Mr. Kelly?

16 A: No. I didn't know him.

17 Q: Did you ask for anyone else?

18 A: No.

19 Q: Now, you had already handled four or five cases prior to
20 this?

21 A: Yes.

22 Q: Had you talked to any of your co-counsel on those cases?

23 A: About Stephen's case?

24 Q: Yes, sir.

25 A: I don't think so.

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1 Q: Did you ever consider asking Judge Jefferson to -- hey,
2 I had a great result with -- with this guy, will you appoint
3 him --

4 A: No.

5 Q: -- on Stanko's case?

6 A: No.

7 Q: Was there any doubt in your mind that you were lead
8 attorney in this case?

9 A: No.

10 Q: Okay. So when you say no, you were the lead attorney?

11 A: Yes.

12 Q: What did you see your role and Dale's role? How did --
13 how did the two --

14 A: Dale or Gerald?

15 Q: I'm sorry. Gerald. I'm sorry. Gerald.

16 A: I looked at us as being pretty much co-equals. I wanted
17 -- I didn't want to say, okay, Gerald, you do this and I'll
18 do this because I wanted there to be substantial overlap in
19 what we did. So in effect, he would have two attorneys doing
20 basically the same thing.

21 Q: What was the division of work? Did y'all ever sit down
22 and discuss that?

23 A: The division of work? We probably did. There are
24 things that I wanted to make sure he did cover because he
25 seemed to be more experienced in that area than I was, but it

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1 was never a situation where he was going to do this to the
2 exclusion of my involvement in it and vice versa.

3 Q: Now, just a second ago, you said, you know, he was more
4 experienced in this area?

5 A: Right.

6 Q: If there was an area of Stephen's case, what area would
7 you have considered yourself to be more experienced?

8 A: The two death penalty cases that I had tried immediately
9 prior to Stephen's both involved brain issues and when it
10 became apparent to me that Stephen's case did as well, then
11 it became something that I was interested in simply based on
12 the two prior cases that we had just done. So that was --
13 that was important to me because I felt like it explained why
14 Stephen did what he did. You know, it's --

15 Q: And when --

16 A: When you sit down and talk to him, he's a gentle,
17 genuine, nice man. I can't imagine him doing what was done
18 in this case without there being some reason, you know, to
19 explain it.

20 Q: When --

21 A: And -- and that's -- that's why we went in that
22 direction and that's why I chose to go in that direction.

23 Q: When you were with Appellate Defense --

24 A: Yes.

25 Q: -- did you have an opportunity to work on any cases

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1 involving the brain and different areas of the brain when you
2 were reviewing transcripts and preparing briefs?

3 A: I don't recall.

4 (WHEREUPON, counsel delivered a cup of water to the
5 witness.)

6 A: Thank you. I don't -- I don't recall at the appellate
7 level there being brain issues.

8 Q: Okay. Was that a new area that was just currently, you
9 know, becoming more explored or --

10 A: Well, I -- when I was leaving Appellate Defense, that's
11 when DNA was just coming into effect. So technology was
12 definitely advancing, including, you know, information about
13 how the brain worked, but there was never a decision on my
14 part to get involved in cases that raised brain development
15 issues. It's just the way that it happened, first with
16 Marion Smith, who was injured as a child when a piece of
17 furniture fell on his head.

18 And then the next death penalty case I had was --
19 involved an 18 -- 19-year-old, you know, the difference. We
20 went into the issue there between the difference in the
21 mature -- maturization [sic] process between the two major --
22 with someone in the mid-20s.

23 And then Stephen's case came along. So they just
24 presented themselves.

25 Q: You indicated that Gerald was more familiar with one

1 area?

2 A: I think --

3 Q: What did you mean by that?

4 A: I think Gerald's interest was in life history and, you
5 know, the fact that he was a good student. Stephen was a
6 good student and those kinds of issues. And when I say more
7 experienced, I think he was more interested in that, and so I
8 -- you know, I let him work in that direction to the extent
9 that he felt like he needed to.

10 Q: Did Gerald put together a team, so to speak?

11 A: Well, he had used Dale Davis and Vicki Childs and had
12 recommended to me that we use them, which I agreed to do.

13 Q: Did you and Ms. Childs and Ms. Davis and Mr. Kelly --
14 did y'all ever sit down and brainstorm, hey, this is going to
15 be our theory, this is going to be our strategy? Did you
16 ever do that together?

17 A: I know we sat down and talked about the case. I was
18 never of the opinion that I felt like we ought to abandon the
19 brain defect with Stephen. I felt pretty strongly about
20 that, especially after the -- the two prior cases that we had
21 dealt with.

22 Q: Did you ever tell Mr. Kelly or Ms. Davis, hey, I think
23 what y'all are trying to do is a waste of time?

24 A: No. Of course, not.

25 Q: What did you do to develop your theme or develop your

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1 theory on the brain issue?

2 A: It started I think, to the best of my recollection --
3 see, we didn't get into the brain issue at trial with Marion
4 Smith because he was acquitted. So we were going to bring
5 the brain experts in during the guilt phase -- not the guilt
6 phase but the penalty phase, but we didn't get there because
7 of the acquittal.

8 The next issue -- the next case was the Boyd Meekins
9 case, and Boyd Meekins said murdered Randy Gerald, Lt.
10 Gerald, from J. Reuben Long Detention Center, but he was the
11 one -- he was the teenager. And I felt like probably the
12 best way to approach that was to base his defense on his age.
13 It didn't really have anything to do with the guilt phase.
14 It had to do with the penalty phase. It showed a difference
15 between an 18- or 19-year-old's brain, a teenage brain, as
16 opposed to a fully mature adult.

17 Q: Now, of course, in this case, Stephen was not a
18 teenager, was he?

19 A: No, but the first time I met with Steve, he explained to
20 me that he had blacked out. He explained to me what had
21 happened, what he and Laura Ling were doing.

22 They were having an argument, an oral argument. She
23 ended up slapping him, as I recall, and that's when he
24 blacked out. His response to that was the murder or the
25 conduct that followed with respect to Laura Ling and her

1 daughter.

2 And so it presented a situation, you know, looking at
3 Stephen's past and the fact that he obviously was a very
4 smart individual. It raised the issue of the brain, and it
5 made me want to look at that case and figure out what exactly
6 was going on in Stephen's brain at that time that was
7 different from what would be going on in a healthy brain.

8 Q: And that leads me to my next question.

9 A: Yes, sir.

10 Q: How long do you think you reviewed the discovery? How
11 many times do you think you met with Stephen before you said,
12 all right, this is the way we're going to go?

13 A: I don't know. I really don't have any recollection of
14 it. I think that Stephen -- Stephen and I discussed it. I
15 think he was in agreement with it, but in terms of how many
16 times I actually met with him to discuss it, I don't recall.
17 I can't respond to it.

18 Q: As I already asked you and you've indicated, you were
19 the lead attorney in this case; is that right?

20 A: Yeah.

21 Q: And so as part of one of your many duties of being lead
22 counsel, you had to submit vouchers for various experts and
23 various other attorneys and people like that; is that right?

24 A: Yeah.

25 Q: All right. I'm going to hand you what I've already

WILLIAM DIGGS - DIRECT BY MR. ANDERSON

1 given a copy of to the Attorney General's Office.

2 MR. ANDERSON: Your Honor, Dr. Thrasher's invoice.

3 BY MR. ANDERSON:

4 A: Okay.

5 Q: Dr. -- is it Sachy or --

6 A: Sachy.

7 Q: Sachy. His invoice. Marc Einhorn?

8 A: Einhorn, yeah.

9 Q: His -- and I -- Albiniaak?

10 A: Albiniaak.

11 Q: That one. And Dr. Califf.

12 A: Califf.

13 Q: And ask you just to review those for a moment.

14 A: Well, I can see my signature on each of them; so it
15 appears to be the document that I would have viewed at the
16 time.

17 Q: And you submitted those to, I guess, OID?

18 A: Yes.

19 Q: These are all experts that you used in the case?

20 A: Yeah. That's not all of them, but they were experts
21 that we used.

22 Q: Right. And I believe you also used a Dr. Gur and also a
23 Dr. Wu; is that right?

24 A: Correct.

25 Q: Will you flip over to Dr. Sachy's and look at that just

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1 for a moment?

2 THE COURT: Are we -- are you going to ask to introduce
3 these items into evidence?

4 MR. ANDERSON: Yes, sir, I am. I'm getting copies for
5 the court reporter, Your Honor.

6 THE COURT: Okay. Well, any objection to them being
7 admitted from the State?

8 MS. SCRANTOM: No objection to the timesheets, Your
9 Honor.

10 THE COURT: All right. Let's go ahead and admit those
11 so they can be marked as exhibits so the record is clear on
12 which one you are referring to, please.

13 Are there five of them, Mr. Anderson?

14 MR. ANDERSON: Yes, sir, Your Honor. And, Judge, just
15 for clarification, we'll say --

16 THE COURT: Hold on a minute. Hold on a minute. While
17 she's marking those, she can't --

18 THE COURT REPORTER: Here you go.

19 THE COURT: Are you ready, Krystal?

20 THE COURT REPORTER: Yes. They're numbered in the order
21 he said them.

22 THE COURT: I'm sorry, Mr. Anderson. Go ahead.

23 (WHEREUPON, Plaintiff's Exhibit Number 7, the Thrasher
24 invoice, was admitted into evidence.)

25 (WHEREUPON, Plaintiff's Exhibit Number 8, the Sachy

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1 invoice, was admitted into evidence.)

2 (WHEREUPON, Plaintiff's Exhibit Number 9, the Einhorn
3 invoice, was admitted into evidence.)

4 (WHEREUPON, Plaintiff's Exhibit Number 10, the Albiniaak
5 invoice, was admitted into evidence.)

6 (WHEREUPON, Plaintiff's Exhibit Number 11, the Califf
7 invoice, was admitted into evidence.)

8 BY MR. ANDERSON:

9 Q: Bill, if you would, look at your timesheet and also, if
10 you would, pull out what's going to be referred to as
11 Plaintiff's Exhibit Number 8. That's Dr. Sachy's.

12 A: Okay. I've got mine and I've got Dr. Sachy.

13 Q: All right.

14 A: What page?

15 Q: On yours, it will be page 6.

16 A: Okay.

17 Q: At the very top of the page, I guess, it's under -- it's
18 the second entry. It says April the 6th, 2006?

19 A: Okay.

20 Q: Do you see that?

21 A: Yes.

22 Q: And that's on your timesheet?

23 A: Yes.

24 Q: If you would, what does -- what does that indicate?

25 A: It indicates a telephone -- a telephone discussion with

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1 Dr. Sachy and Einhorn about the status of the court order on
2 expertise and a discussion of a schedule for examinations for
3 Dr. Sachy to set up a PET scan.

4 Q: Do you have any idea how many times Dr. Sachy met with
5 Stephen?

6 A: No.

7 Q: You indicated on your timesheet that y'all met one time
8 together?

9 A: Well, I remember the first time that we met. I'm sure
10 there were additional meetings or at least an additional
11 meeting between Sachy and Stephen.

12 Q: Okay. Do you see that anywhere on his time sheet?

13 A: In terms of him meeting with Stephen?

14 Q: With Stephen, without you?

15 A: I don't know. Do you want me to go through the whole
16 thing?

17 A: Would it surprise you if it's not on there?

18 A: It would -- you know, I would expect it to be on there,
19 but it wouldn't surprise me simply because it's difficult to
20 keep track of every particular thing that you do. I can't
21 explain how he was doing that and what process he was using.

22 Q: On -- on your time sheet, back -- going back to page --
23 to page 5?

24 A: Yes.

25 Q: Again, kind of near the top, March the 20th, 2006?

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1 A: Okay.

2 Q: What does that indicate?

3 A: Contacting Dr. Sachy.

4 Q: Prior to then, did you have any contact with him before
5 that phone call?

6 A: Is this the first time that I ever had any discussion
7 with Dr. Sachy?

8 Q: Yes, sir.

9 A: I didn't know Dr. Sachy before this case and so if this
10 is the first entry, that's probably the first time I ever
11 spoke with him.

12 Q: All right. And what does it indicate under your
13 notation for March the 20th, 2006?

14 A: March the 20th? It indicates that I had contact with Dr.
15 Sachy to -- about the issue of him being an expert witness.

16 Q: And what exactly is your notation?

17 A: That he would be our expert.

18 Q: So after a 30-minute phone call with him and never
19 having any dealings with him before, not knowing him --

20 A: Right.

21 Q: You decided that he was going to be your expert?

22 A: Yeah. He had been recommended by Dr. Thrasher, but I
23 mean when I spoke with him and I -- he was a psychiatrist.
24 He was a professional. He came recommended highly. In fact,
25 he was the first person that Dr. Thrasher had recommended to

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1 do what we wanted to be done in the case.

2 Q: And what was that?

3 A: To be able to explain the condition of Stephen's brain
4 under -- under --

5 Q: Did you -- did you --

6 A: -- and how it performed and be able to demonstrate it
7 with visual evidence.

8 Q: Did you and Kelly together come up with --

9 A: I don't recall.

10 Q: -- Dr. Sachy?

11 A: I don't -- I don't think so. I think it was a decision
12 that I made. But, you know, looking at it from your
13 perspective under question, that could've been changed at any
14 time if it appeared to me it didn't work out or wasn't
15 working out.

16 Q: Did you ever explore any other alternatives?

17 A: To the insanity defense?

18 Q: Yes, sir.

19 A: No.

20 Q: Did you and Sachy come up with Stephen's a psychopath?
21 I mean is that --

22 A: I didn't come up with that and, when it came out of his
23 mouth, I cringed about it. It's not -- it was not our
24 defense. It was not my defense.

25 Q: Did you --

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1 A: He was an expert. He made a decision to use that word,
2 but, you know, I don't think a psychopath chooses to be a
3 psychopath. It's just the way it might be determined by the
4 jury, but it's not a -- it wasn't a strategy that I had used.
5 The first time I ever heard that was when he testified to it
6 on the stand.

7 Q: What was Dr. Sachy's role and what was his -- what was
8 going to be his job in this case?

9 A: He was going to assist me in providing expert testimony
10 on the issue of insanity. He was going to connect us with
11 some people that could do the visuals to demonstrate what the
12 scans looked like and also get Dr. Einhorn involved in doing
13 that continuous performance exam to show what Stephen's brain
14 was doing when it was fully activated.

15 Q: Now, you indicated that Dr. Thrasher -- excuse me --
16 Thatcher was the one who introduced you to Dr. Sachy?

17 A: Thrasher.

18 Q: Thrasher?

19 A: Yes.

20 Q: Prior to him recommending, did he -- had he met with
21 Stephen prior to recommending Dr. Sachy to you?

22 A: Did Thrasher meet with him?

23 Q: Yes, sir.

24 A: Not to my knowledge.

25 Q: And what was Dr. Thrasher? What is his field of

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1 expertise?

2 A: He's a psychiatrist. He was also -- interestingly
3 enough, he was at Guantanamo Bay. Well, he was down in Cuba
4 when Stephen was born. You know, he wasn't there
5 particularly in the delivery room, but I thought it was
6 interesting that Dr. Thrasher was at that base at the time
7 Stephen was born. So he was kind of familiar with what the
8 process would have been at that time.

9 Q: I'm going to hand you a report that was prepared by Dr.
10 Thrasher. Are you familiar with that report?

11 A: I'm sure I am. I don't recall it.

12 Q: Is this a report that you used in the case in Georgetown
13 County?

14 A: I don't know. I don't -- I can't recall.

15 Q: On the --

16 A: Yes. This was -- it was -- Dr. Thrasher did not agree
17 that Stephen was insane in Horry County. So I mean he was
18 available to testify about the status of some aspects of
19 Stephen's conduct at that point in time and his personality,
20 but he would only -- he only agreed on the insanity issue
21 with respect to the Georgetown case.

22 Q: It appears from looking at page 1 that he actually met
23 with Stephen on two occasions? Dr. Thrasher? Once on July
24 the 7th, 2006, and then once again on July the 28th, 2006?

25 A: Okay.

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1 Q: Does that appear to be at the top of page 1?

2 A: It appears to be so.

3 THE COURT: What were those dates again, Mr. Anderson?

4 MR. ANDERSON: July the 7th, 2006, and then again on July
5 the 28th, 2006.

6 THE COURT: Thank you. I'm sorry.

7 BY MR. ANDERSON:

8 Q: And if it will help you any, Mr. Diggs, it indicates
9 that you were present. That's at the bottom of the first
10 paragraph?

11 A: Yeah.

12 Q: So you were present on both of those occasions?

13 A: I don't recall it. If he says it, I probably was, but I
14 don't have any recollection of it.

15 Q: And, of course, we've already talked about this, but you
16 had already decided on March the 20th, 2006, that Dr. Sachy
17 was going to be your expert?

18 A: At that point in time, I had made a decision that Sachy
19 was going to be an expert and, of course, that was dependent
20 upon whatever developed after that. I mean I was always in a
21 position to change that because there were other experts that
22 we had discussed this case with, as you can see, I'm sure,
23 going through the record.

24 Q: Sure.

25 A: Whom we did not end up using.

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1 Q: Okay.

2 A: And, of course, the same could have been with Dr. Sachy,
3 but it just kept -- you know, the way the evidence kept
4 unfolding, it was consistent with what our position was for
5 the defense.

6 Q: And, of course, when you had decided on Sachy in March,
7 that, of course, was prior to Dr. Thrasher seeing him in
8 July?

9 A: Yeah. Because when I met with Dr. Thrasher, it was -- I
10 had used Dr. Thrasher on a number of occasions in other cases
11 and so when I got appointed to this case, my relationship
12 with him was such that I could simply go to him and say,
13 look, I've got an appointment on this case. Here's what
14 happened. You know, what are -- what are your thoughts about
15 it?

16 And I told him what, you know, happened to come off of
17 the two prior death penalty cases that I worked on involving
18 brain issues. You know, I said I really wish we could get a
19 situation where we could show that in a demonstrable fashion,
20 and he said I know who can do the imaging. That's Dr. Sachy.
21 That's how we came up with it.

22 MR. ANDERSON: Judge, at this time, I would move to
23 admit this as Plaintiff's 11.

24 THE COURT REPORTER: 12.

25 MR. ANDERSON: Excuse me -- 12.

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1 THE COURT: Any objection?

2 MS. SCRANTOM: No objection.

3 THE COURT: Without objection, admitted.

4 (WHEREUPON, Plaintiff's Exhibit Number 12, report of Dr.
5 Thrasher, was admitted into evidence.)

6 THE COURT: What number again was that, Krystal?

7 THE COURT REPORTER: 12.

8 THE COURT: Thank you.

9 BY MR. ANDERSON:

10 Q: Did you and Dr. Sachy ever talk about the Rivera case
11 from Georgia?

12 A: He mentioned it, but we didn't discuss it in any detail.

13 A: Did you ever research the Rivera case out of Georgia?

14 A: No. What I did in this case was based on my experience
15 with the two previous death penalty cases and simply because
16 I mean I didn't know this Rivera person and I didn't know
17 what the circumstances of that case were.

18 Q: Are you aware that Dr. Sachy also testified as an expert
19 in that case --

20 A: Sure.

21 Q: -- and his defense was psychopath?

22 A: I'm aware that Dr. Sachy was an expert in the case.

23 Q: So you're not aware that he said that Mr. Rivera was a
24 psychopath?

25 A: No. I'm not consciously aware of that.

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1 Q: Are you aware that Mr. Rivera got the death penalty in
2 Georgia?

3 A: I think I recall it.

4 Q: Now, of course, it was your job to supervise the
5 experts?

6 A: Well, it's not my job to tell them what to do.

7 Q: I understand that.

8 A: It was my job to kind of select who they were going to
9 be.

10 Q: It was your job --

11 A: And how they were going to fit into the defense.

12 Q: It was your job to coordinate with them?

13 A: Yeah, I would say.

14 Q: It was your job to, I guess, do the direct examination?

15 A: I think I did the direct examination of the experts.

16 Q: And, of course --

17 A: In the guilt phase.

18 Q: And, of course, it would also be your job to prepare
19 those experts? I mean you talked about --

20 A: In a certain way. Yeah, in a certain way, but you don't
21 tell a doctor how to testify about his area of expertise.

22 Q: I mean certainly you would say --

23 A: They have their area of expertise.

24 Q: -- hey, Doc, I'm going to ask you these questions --

25 THE COURT: Hold on a minute. Hold on a minute, Mr.

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1 Diggs.

2 THE WITNESS: Yes, sir.

3 THE COURT: Let him finish his question before you start
4 talking and, likewise, please, Mr. Anderson --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- let him finish his answer before you
7 start asking the next question. Okay? Thank you.

8 MR. ANDERSON: Yes, sir.

9 BY MR. ANDERSON:

10 Q: Certainly, you said, hey, Doc, I'm going to ask you this
11 question, what do you think your response with be? Did y'all
12 do that?

13 A: Something -- probably something similar to that. Now,
14 we did not sit down and rehearse. You know, I didn't sit
15 down and go through a rehearsal, you know, in terms of what
16 the direct examination was going to be, but we knew basically
17 what the area of the testimony would be.

18 Q: You did not know what your experts would say?

19 A: I didn't -- I didn't know he was going to use that word
20 in that circumstance. If we had -- you know, it's just not
21 something that occurred to me to do. It didn't occur to me
22 to say don't use the word psychopath because that might be
23 taken in a -- in an adverse way by the jury, but you know,
24 again, a psychopath, I would argue, is a psychopath because
25 of something other than a conscious decision to be a

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1 psychopath. So I think to be honest about what the the
2 circumstances are is not a bad thing in a case like that.

3 Q: Do you know if Dale Davis or Mr. Kelly -- were they ever
4 present when you were talking to some of the experts?

5 A: They might have been, but I'm not sure.

6 Q: Did you ever ask them, hey --

7 A: No.

8 Q: -- what do you think of this witness?

9 A: No. I don't think so.

10 Q: Would it be fair to say that, I guess, Mr. Kelly's job
11 was to handle Ms. Davis and Ms. Childs and your job was to --

12 A: Well --

13 Q: -- handle the experts?

14 A: I would say that he did that. I wouldn't say it was his
15 job to do it. I think that he did it a lot of times because
16 he had a prior relationship with them. We didn't have a
17 relationship. So it was such that I didn't do anything nor
18 have any involvement with them I mean because I did.

19 Q: If I'm understanding correctly, your theme or theory in
20 this case was going to be not guilty by reason of insanity?

21 A: I think so.

22 Q: And, of course --

23 A: And you know what? I think that now.

24 Q: And, of course, your -- Sachy was your guy. I mean he
25 was going to be the one that was going to get you there?

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1 A: No. Dr. Wu was in that area of expertise explaining
2 what the scans revealed. Dr. Wu was the one that put
3 together the visual video that -- that we used at the trial.
4 Dr. Thrasher was there. It wasn't solely based on Dr.
5 Sachy's opinion.

6 Q: I'm going to hand you a report that was prepared by him
7 addressed to you. Do you recognize that?

8 A: Well, it is addressed to me. I recognize his
9 letterhead.

10 Q: Is it a report about Stephen Stanko?

11 A: Yes.

12 Q: In the very first paragraph, Mr. Stanko was evaluated
13 pursuant to your request?

14 A: Yes.

15 Q: And, of course, it's addressed to you?

16 A: Yes.

17 Q: So your request would be will you --

18 A: Of course, in fact, I remember. I think I testified
19 earlier that we met together at the detention center here in
20 Georgetown. The first time Dr. Sachy came to town to meet
21 with Stephen, I was there when they met.

22 Q: It appears to be five-page report and then a sixth page
23 attached that has Dr. Wu's report on the back. Does that
24 appear to be correct?

25 A: Yes, sir.

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1 Q: And it indicates that he met with Stephen at the
2 Georgetown County Detention Center on June the 24th, 2006?

3 A: Talking about Dr. Sachy?

4 A: Yes, sir.

5 Q: Where is that?

6 Q: I'm sorry. First page, middle ways down, source of
7 information?

8 A: Yes. June 24th, 2006.

9 Q: Yes, sir. That's when he met with him for approximately
10 three hours?

11 A: Okay. Yes, sir.

12 Q: This is the report that he prepared for the trial; is
13 that right?

14 A: It appears to be, yes.

15 Q: And, of course, you would have given a copy of this to
16 Dr. Sachy when he was testifying?

17 A: I don't recall. I mean the --

18 Q: Given a copy of it to the prosecution as well?

19 A: I assume we did.

20 MR. ANDERSON: Your Honor --

21 A: I don't have -- I don't have a direct recollection of
22 that, but I assume we looked at it.

23 MR. ANDERSON: Judge, I would move to admit this as
24 Plaintiff's 13, I think, at this time.

25 THE COURT: Any objection?

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1 MS. SCRANTOM: Your Honor, the only objection we have
2 would be the last page has Joseph Wu's name on the back of
3 it. I'm not sure that it's clear from this exhibit whether
4 that last page had been adopted into Sachy's report or not.
5 I'm not sure we've had a foundation for that.

6 THE COURT: I haven't read the report to see if he says
7 it's adopted in there.

8 MR. ANDERSON: Judge, if it'll help the Court, Dr. Wu --
9 we plan on calling him as a witness tomorrow. He can
10 certainly --

11 THE COURT: Okay.

12 MR. ANDERSON: -- authenticate his report, but if you'll
13 give me just a moment, I'll check to see if it's referenced
14 in here.

15 Yes, sir. On the bottom of page 2, it indicates that a
16 brain MRI was ordered and subsequently performed on Mr.
17 Stanko on 5/18/2006 and the -- what Dr. Wu was referring to
18 is May 18th, 2006.

19 MS. SCRANTOM: My understanding is that Dr. Wu is -- Dr.
20 Wu deals with PET scans and not MRIs, but we have no
21 objection to the report coming in.

22 THE COURT: So admitted, Exhibit Number 12. Thank you.

23 THE COURT REPORTER: 13.

24 MR. ANDERSON: I'm sorry. 13, Your Honor.

25 THE COURT: 13. Excuse me.

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1 (WHEREUPON, Plaintiff's Exhibit Number 13, report of Dr.
2 Sacy, was admitted into evidence.)

3 BY MR. ANDERSON:

4 Q: The AG just mentioned this a second ago. Was a PET scan
5 ordered for Stephen?

6 A: I think so.

7 Q: Again, I'm going to hand you a voucher. Is that your
8 signature at the bottom?

9 A: Yes.

10 Q: And this appears that Dr. Marc --

11 A: Einhorn.

12 Q: Einhorn?

13 A: Yes.

14 Q: He did --

15 A: He went --

16 Q: -- the PET scan?

17 A: Yes. He went down and did the -- what's called a
18 continuance performance examination on Stephen while the scan
19 was being done. And what distinguishes this scan from the
20 one that the State introduced or their evaluation of it was
21 the State's evaluation of the scan is done ordinarily on
22 people who are totally at rest and not under full mental
23 activation.

24 MR. ANDERSON: Judge, I would move to admit Plaintiff's
25 14.

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1 THE COURT: Any objection?

2 MS. SCRANTOM: No objection.

3 THE COURT: Without objection, admitted.

4 (WHEREUPON, Plaintiff's Exhibit Number 14, PET scan
5 voucher, was admitted into evidence.)

6 BY MR. ANDERSON:

7 Q: Do you recall Dr. Sachy saying that Stephen was a
8 psychopath prior --

9 A: I remember.

10 Q: -- to his testimony?

11 A: Oh, you mean prior to his testimony?

12 Q: Yes, sir.

13 A: I don't -- I don't recall discussing it. Now, if he put
14 it -- if he had made a statement like that, I just don't
15 recall it or I missed it.

16 Q: Do you -- do you recall that in March of, I guess, 2006,
17 you were aware that Dr. Sachy had referred to Mr. Rivera as a
18 psychopath?

19 A: I don't have a recollection of that at this point.

20 Q: Do you remember a pretrial hearing that was conducted on
21 July the 31st, 2006, and at that hearing before Judge
22 Jefferson, Dr. Sachy referred to Stephen as a psychopath?

23 A: I don't recall that. He may have.

24 Q: Did Ms. Dale Davis ever suggest that you go to any
25 capital defense training that was being held in Charleston in

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1 February of 2006?

2 A: I think so.

3 Q: Did you talk to her about that at all?

4 A: I didn't talk to her about it. I got an email from her
5 about it and I didn't -- I chose -- I think I told her that I
6 was not going to attend it at that time.

7 Q: Any reason why?

8 A: I was probably busy.

9 Q: Did she ask you to take the file with you and y'all
10 could brainstorm it with some experts?

11 A: She might have. I mean she was very good. That's
12 probably -- that sounds like what she would do.

13 Q: When you were deciding on Dr. Sachy and when you and he
14 talking about his testimony, did you ever ask him about his
15 background?

16 A: Other than his medical training and his work, no.

17 Q: Any qualifications? Whether or not he had ever been
18 published?

19 A: A psychiatrist? No.

20 Q: Were you aware of any previous cases he had testified
21 in?

22 A: He was -- he was recommended by a doctor that I trusted
23 and went to for advice and such.

24 Q: Now, at some point in time, you actually thought about
25 using Dr. Tora Brawley and Dr. Donna Schwartz-Watts?

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1 A: Right.

2 Q: Do you remember that?

3 A: Yes.

4 Q: And why did you decide not to use them?

5 A: Because I wanted to --

6 Q: I'm sorry. What?

7 A: I wanted to rely on the visual evidence that we could
8 develop in the case. And I don't recall -- the two witnesses
9 that you mentioned would testify based on their evaluation or
10 interview with Stephen, and I felt like Sachy and Wu and
11 Reuben Gur would be more effective in what we needed -- what
12 we wanted to do in Stephen's case in order to present the
13 defense that I felt like was needed.

14 Q: Are you aware that in the Rivera case Dr. Sachy told
15 counsel what he expected to find before he even met with
16 Rivera?

17 A: No. I'm not really familiar with the details of the
18 Rivera case.

19 Q: Are you familiar that he did the exact same thing in
20 this case? He told you what he expected to find before
21 meeting with Stephen?

22 A: I think that probably no, but I'm --

23 Q: Do you recall him saying something about the way Stephen
24 held his hand that he knew before he even met with him that
25 he was suffering from several defects?

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1 A: I remember that Dr. Sachy felt like based on -- based on
2 what he knew about the case that he felt like he could
3 connect what he was going to find, but I think -- I think
4 that was based on his experience and his work and his
5 training, and it was confirmed by Dr. Wu and Dr. Gur.

6 Q: And your whole defense in this case was going to be the
7 insanity defense?

8 A: Well, at the guilt phase. I mean I don't think there
9 was any question that Stephen did it.

10 Q: Sometimes when you have overwhelming guilt in a case, do
11 you adopt another strategy when you're doing the guilt or
12 innocent phase?

13 A: Sometimes you do, but when you have this kind of
14 evidence, I think it's a mistake not to use it.

15 Q: Are you familiar with insanity in South Carolina?

16 Q: Yeah.

17 Q: Are you familiar with Section 17-24-10 of the South
18 Carolina legislature?

19 A: I think at the time I would have been familiar with the
20 insanity legislation.

21 Q: Are you aware that Section 17-24-10 said it is an
22 affirmative defense to a prosecution for a crime that at the
23 time of the commission of the act constituting the offense
24 the defendant had a disease, defect, lacked the capacity to
25 distinguish moral right or legal wrong from moral right or

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1 legal wrong or the -- to recognize that particular act?

2 A: Are you asking me now about the latter part of the
3 statute or the affirmative defense part?

4 Q: Yes, sir.

5 A: The latter part?

6 Q: Yes, sir.

7 A: Yes. And I think -- I think that Stephen's conduct in
8 this case, as I understood it, fit that definition.

9 Q: And, of course, in Section 24 -- I'm sorry -- 17-24-20,
10 guilty but mentally ill, it specifically says that at the
11 time he lacked the capacity to conform to the requirement of
12 the law?

13 A: Is that the guilty but mentally ill?

14 Q: Yes, sir. Guilty but mentally ill.

15 A: What I recall is that guilty but mentally ill isn't a
16 defense. It would not have been a defense to the case. It
17 might have been mitigating evidence that we could have
18 pursued, but I don't see that as being inconsistent with what
19 we argued at the guilt phase.

20 It wasn't a situation where it was either/or. It was a
21 situation in my mind where we presented his defense at the
22 guilt phase. If the jury didn't feel like he was insane at
23 that time, certainly that was not reason to eject Dr. Wu or
24 Dr. Gur or Dr. Sachy or Dr. Thrasher. It wasn't a reason to
25 eject them in terms of the mitigating evidence.

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1 Q: Evidence of a mental disease or defect that's manifest
2 only by repeated criminal or antisocial conduct is not
3 sufficient to establish a defense of insanity?

4 A: Say it -- yes, sir.

5 Q: In South Carolina Code Section 17-24-10, it indicates
6 evidence of a mental disease or defect that is manifested
7 only by repeated criminal or antisocial conduct is not
8 sufficient to establish a defense of insanity?

9 A: Right. Right.

10 Q: I mean isn't that one of the things y'all were trying to
11 say about Stephen?

12 A: No.

13 Q: And he starts from --

14 A: No, not -- not in the guilt phase. We were trying to
15 say he was insane in the guilt phase because he wasn't aware
16 of what was -- what was happening. Now, simply because that
17 wasn't found, you know, by the jury at that time, it's not
18 inconsistent to accept that evidence as mitigating evidence
19 at the sentencing phase.

20 Q: Now, Dr. Sachy and Dr. Thrasher had already diagnosed
21 Stephen with antisocial personality disorder?

22 A: I think --

23 Q: Right?

24 A: I think so.

25 Q: And, of course, the law says that's not enough?

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1 A: Well, we had argued. Yeah. And we didn't argue that
2 was a defense.

3 Q: Are you aware of any cases in South Carolina where the
4 insanity defense has worked when it was contested by the
5 State?

6 A: Well, when it was contested, at this time I don't.

7 Q: Are you aware of any now?

8 A: I can't recall any off the top of my head at this point.

9 Q: Are you aware of any cases now which were?

10 A: I know it was the law at the time and simply because,
11 based on the history of other cases, it's not conclusively
12 going to be outcome determinative, I think, as to whether or
13 not insanity needs to be used or pursued in a particular
14 case.

15 I felt it was appropriate in Stephen's case because he
16 didn't remember what happened. He blacked out. You had
17 multiple medical doctor expert opinions that he was insane,
18 and we could demonstrate it with visual evidence.

19 Q: Would you agree that antisocial personality disorder is
20 a pervasive pattern of repeated criminal or antisocial
21 conduct?

22 A: Yes.

23 Q: Now, in part of the mitigation in the Georgetown case,
24 you called three officers from the Georgetown Detention
25 Center?

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1 A: Yes.

2 Q: Is that right?

3 A: Yes, sir.

4 Q: Did you call anyone that knew Stephen when he was in
5 Turbeville or the Department of Corrections between 1996 and
6 2004?

7 A: I think so. I mean I don't recall, but I would say,
8 yeah, I think we did. I think that those people were
9 familiar with Stephen when he was still in the 10-year
10 sentence.

11 Q: Would it surprise you to know that you called them in
12 the Conway case, not the Georgetown case?

13 A: No. I think we did call some people in the Georgetown
14 case.

15 Q: From the Detention Center, three from the Detention
16 Center?

17 A: Okay.

18 Q: Does that sound right?

19 A: If that's what it was.

20 Q: And I know it's been a long time.

21 A: Yeah, it has been.

22 Q: Did you ever think about calling an expert on prison
23 life or the adaptability in prison or anything like that in
24 mitigation?

25 A: I didn't think about calling an expert on that. I think

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1 we relied on the witnesses that were presented at the trial
2 who were familiar with what his behavior was in a structured
3 environment. And --

4 Q: Go ahead.

5 A: I think -- I was going to ask you. I wanted to make
6 sure I understood your question correctly, and I think I do
7 understand it.

8 Q: Did it ever surprise you or did you ever object to Dr.
9 Brawley being used by the State when you had originally
10 contacted her to be used as a witness for the defense?

11 A: I think that if she had done anything that was -- if she
12 had consulted with Stephen and formed opinions and gotten
13 information from him, stuff, things of that nature, I think I
14 would've objected to it. If I didn't, I should have.

15 MR. ANDERSON: Court's indulgence for a moment, Your
16 Honor.

17 THE COURT: Yes, sir.

18 BY MR. ANDERSON:

19 Q: Now, you did the direct examination on Dr. Albiniaak?

20 A: Albiniaak.

21 Q: Albiniaak?

22 A: Yes.

23 Q: Is that right?

24 A: Yes.

25 Q: Did it surprise you when he said that he compared

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1 Stephen to reptiles like crocodiles, alligators, and caiman?

2 Q: No. I think what he was talking about there is the --
3 I'd say limbic system impulse. I don't know if that's an
4 accurate medical term or not, but that's what I understood
5 him to be talking about and that's what was happening with
6 Stephen at the time.

7 I don't -- I don't agree with you that that's some kind
8 of offensive terminology that didn't have an appropriate
9 place in the case because I think that's what -- everybody
10 knows people have reptilian-based brains. Humans do. And
11 that's where that killer instinct or impulse came from in
12 Stephen.

13 Q: Have you --

14 A: When Dr. Albiniaak was talking about that, I think that's
15 what he was discussing.

16 Q: Are you aware that Dr. Thrasher referred to Stephen as a
17 con man who tells lies upon lies because he's a psychopath?

18 A: When did he say that? I mean if I could ask.

19 Q: Sure.

20 A: Was that in the guilt phase?

21 MR. ANDERSON: Your Honor, I'm -- may I approach the
22 witness?

23 THE COURT: Yes, sir.

24 BY MR. ANDERSON:

25 Q: This is Volume 4 of 8 on the record on appeal. If you

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1 will refer to, I guess, pages 1535 through 1537?

2 A: Okay. Bear with me a second. Some of these -- some of
3 the page numbers were chopped off. That's why it was
4 difficult to find. All right. I've got 1535. What line?

5 Q: It's between 1535 and 1537, those two pages.

6 A: Yeah. Now, this -- this testimony is based on Stephen's
7 conduct after he had served his prison sentence for, you
8 know, the first 10-year prison sentence. And it was
9 consistent with our theory of the defense. So --

10 Q: But Dr. Thrasher is referring to him as a psychopath?

11 A: Well --

12 Q: And this is, of course --

13 A: I would have used it -- I would have used -- you know,
14 I'm not a doctor, especially a psychiatrist, but the
15 testimony about Stephen's conduct after high school -- I
16 think that testimony was necessary to explain why Stephen was
17 so successful in school as a teenager and as a young child
18 growing up and as a teenager and why his conduct was so
19 vastly different after he graduated from high school.

20 Q: All right.

21 A: He didn't -- he didn't mature like normally, you know,
22 people do.

23 Q: Are you aware that Dr. Thrasher also said that it's very
24 unlikely that he'll make a significant change now?

25 A: Yeah. Yeah.

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1 Q: Now, when you were directing Dr. Sachy or Sachy, are you
2 -- do you remember him referring to murderers and psychopaths
3 often have damage to their frontal lobes?

4 A: I don't recall it, but that's --

5 Q: Do you remember him --

6 A: That's probably consistent with what our theory of the
7 case was --

8 Q: Do you remember him --

9 A: -- with respect to Stephen's conduct.

10 Q: Do you remember him indicating that Stephen was morally
11 insane?

12 A: I think he's -- I don't recall him saying that, but I
13 think that's consistent with what his opinion of the case was
14 with respect to what the physical evidence showed and what
15 the scans showed.

16 Q: Do you remember him stating on the record of appeal on
17 page 1774 that Stephen was a psychopath?

18 A: I remember him saying he was a psychopath.

19 Q: And again, he compared him to a lizard or an alligator?

20 A: Well, again, you know, he was talking about reptilian --
21 the human-based -- basically, the human brain.

22 Q: Do you remember him saying that Stephen was incorrigible
23 and evil?

24 A: See, the problem with Stephen was he didn't have the
25 functionality happening up here when that impulse came out

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1 from the reptilian part of the brain. That normally -- okay.
2 If he had had a healthy functioning frontal lobe at that
3 point, he wouldn't have -- being slapped wouldn't have
4 resulted in his response, you know, to the killing of the
5 person who had slapped him.

6 Q: Dr. Sachy also went on to talk about the Alfred
7 Hitchcock movie *Psycho*. Do you remember that?

8 A: No, I don't remember it.

9 Q: Record on appeal, page 1780?

10 A: Do you want me to look at it?

11 Q: I mean if you don't remember it, I'd like you to look at
12 it.

13 A: I don't -- I don't recall. 1780?

14 Q: Yes, sir. And he also later talked about comparing
15 Stephen to Ted Bundy and also John Wayne Gacy. Do you
16 remember that?

17 A: 1780 is -- on the copy I have, those page numbers are
18 chopped off. Do you have the number of the original page?
19 Let's see here.

20 Q: If you count backwards from 1774?

21 A: 1784?

22 Q: I'm sorry, 1784, -83, -82, -81, -80 at the top of the
23 page --

24 A: Okay.

25 Q: -- it looks like line 3, 4, and 5.

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1 A: Okay. The absolute batterment [sic] and horrible things
2 that took place, our good instinct is to say that person is a
3 psycho. I mean that's why that movie was made, the Alfred
4 Hitchcock movie, *Psycho*. What our gut instinct is is to make
5 these people less crazy. That guy had to be crazy. He was
6 evil. He was psycho. He was insane, question mark.

7 That was, I guess my question.

8 Q: Yes, sir.

9 A: Okay. I think what he's describing there is the way an
10 average person on maybe the jury would look at Stephen's
11 behavior.

12 Q: But I mean that's not -- that's what your witness is
13 saying about him?

14 A: Yeah. And that's what he's saying people do.

15 Q: And then on page 1781, which would be the next page
16 over, he refers to Ted Bundy and John Wayne Gacy?

17 A: Yeah. You know, it was not part of my strategy to do
18 that. I didn't say, now, listen, don't refer to him as Gacy
19 or Bundy or any of those people. I mean it's just something
20 they did. You know, if I had -- if I had scripted his
21 testimony, I wouldn't have put that in there.

22 Q: And on page 1797, he refers to people like Stephen. He
23 says they are evil, they are the devil, and that's on your
24 direct to Dr. Sachy?

25 A: I think what he is saying is when people are insane,

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1 they do those things. You know, I don't think the
2 characterization is inconsistent with what the insanity
3 defense would be --

4 Q: Would that be --

5 A: -- in this case -- in this case. Because if you look at
6 the crime scene, we are not going to win that case based on
7 his life history, in my opinion -- you know, in my opinion,
8 and that's why we went with the defense too because, you
9 know, when he was -- his school days and those kinds of
10 things.

11 Q: And Dr. Thrasher even went so far to describe Stephen as
12 being a wolf in sheep's clothing on direct? Do you remember
13 that?

14 A: Yeah, yeah.

15 Q: In the State's closing, do you recall the trial, page
16 number 3389, that, I guess, Mr. Hembree said you made a
17 promise to the Court that given sufficient evidence, comma,
18 facts, and circumstances, you would not only consider the
19 death penalty, but you would impose the death penalty.
20 You've reached that point in the process.

21 Do you remember Mr. Hembree saying that?

22 A: No. I mean I don't have that transcript in front of me,
23 but what I hear you saying is they promised to do that in the
24 event that the testimony that was presented and the evidence
25 presented justified it.

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1 Q: Do you think you should've objected at that time?

2 A: I might should have. I would really want to look at the
3 context of it before I could say definitely one way or the
4 other, but let me tell you this. My general habit would have
5 been to object to anything I felt was offensive in terms of
6 his closing argument.

7 MR. ANDERSON: Court's indulgence for a moment, Your
8 Honor.

9 THE COURT: Yes, sir.

10 BY MR. ANDERSON:

11 Q: When you were in the, I guess, juror selection part of
12 the trial --

13 A: Right.

14 Q: If a juror stood up in front of Judge Jefferson and said
15 I don't want to be a jury -- juror because I think he's
16 guilty, I think he did it, you would have certainly made note
17 of that?

18 A: Yes. Yes.

19 Q: And then later, if you found out that a juror was
20 familiar with an arresting officer and had had some
21 interaction with them, you would've liked to have known that
22 prior to the juror being on the --

23 A: Yes.

24 Q: -- jury panel?

25 A: Yes.

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1 Q: If he had had a family member go to one of the doctors
2 that testified, would that have been helpful?

3 A: Yeah. Yes, sir.

4 Q: And if he would have disclosed that information to you
5 and to the Court --

6 A: Absolutely. Yes, sir.

7 Q: If you would have found out that his daughter went to
8 the same school as the young girl that was sexually assaulted
9 in this case, would that have been helpful information?

10 A: Yes, sir.

11 Q: Do you think you would've struck that juror?

12 A: Well, certainly, we would have proceeded to ask the
13 judge to pursue it and ultimately would have stricken that
14 juror if we didn't get any kind of satisfaction or
15 satisfactory responses to her questions.

16 Q: Do you recall whether or not you used all of your
17 strikes in this case?

18 A: I think my general practice was to use them all.

19 Q: Now, Dr. Gur was one of the people that you called as an
20 expert in this case; is that right?

21 A: In Horry County. In Georgetown, he was in Israel at the
22 time of the trial; so we couldn't call him. We still -- we
23 never -- nevertheless, we were able to use his graph and his
24 data that he had put together. I was surprised, quite
25 frankly, that the State didn't object to it, but they didn't.

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1 Q: Are you aware that other doctors in your case in
2 Georgetown used his results?
3 A: Other doctors in my -- yes, sir.
4 Q: Like Dr. Sachy?
5 A: Yes, sir.
6 Q: Dr. Thrasher? Dr. Wu?
7 A: Yes, sir.
8 Q: They used his report to rely on?
9 A: Yes, sir.
10 Q: Okay. I'm going to hand you a copy and ask you if you
11 recall that?
12 A: Yes, sir.
13 Q: Is that an MRI --
14 A: Yes.
15 Q: -- that was done on Stephen?
16 A: It appears to be, yes.
17 A: Signed on the back -- or I guess by Dr. Gur and by
18 Christos Dava --
19 A: Davatzikos.
20 Q: Whatever you said.
21 A: Yes, sir.
22 Q: Yes, sir. And your other doctors referred to this and
23 used this in the case in Georgetown?
24 A: I believe they did, yes. I know some of them did.
25 MR. ANDERSON: Judge, at this point in time, we'd move

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1 to introduce this as Plaintiff's, I think, 15.

2 THE COURT: Any objection?

3 MS. SCRANTOM: No objection.

4 THE COURT: Without objection, so admitted.

5 (WHEREUPON, Plaintiff's Exhibit Number 15, report of Dr.
6 Gur, was admitted into evidence.)

7 MR. ANDERSON: Again, Your Honor, Court's indulgence
8 just for a moment.

9 THE COURT: Yes, sir.

10 MR. ANDERSON: That's all the questions I have at this
11 time, Your Honor.

12 THE COURT: All right. Cross-examination.

13 MS. SCRANTOM: May it please the Court.

14 THE COURT: Yes, ma'am.

15 MS. SCRANTOM: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. SCRANTOM:

18 Q: Good afternoon, Mr. Diggs.

19 A: Good afternoon.

20 Q: Okay. Before being appointed to represent Mr. Stanko,
21 you had represented other capital defendants at trial;
22 correct?

23 A: Yes.

24 Q: And the Marion Smith case went to an acquittal; is that
25 correct?

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1 A: Correct.

2 Q: And the other case you had testified about earlier, the
3 Meekins case, could you recall -- could you remind me what
4 the verdict was in that case?

5 A: The verdict was guilty. There was a hung jury at the
6 sentencing phase and he was given life imprisonment.

7 Q: In both of those cases, you identified as having some
8 type of potential mitigating evidence that had to deal with
9 the brain structure --

10 A: Yes.

11 Q: -- of the two defendants?

12 A: I remember I had at least one doctor -- there may have
13 been two. There were two I know that came down. It may have
14 been -- the testimony actually might've been limited to one
15 doctor from Harvard University who came down and talked about
16 the maturization [sic] process of the brain and the unibrain
17 [sic] from the teenage years of 18 up to roughly 24 or 25
18 when the human brain fully matures. And that testimony --
19 what I was referring to is the testimony from that expert.

20 Q: And your co-counsel, Mr. Kelly, had also previously
21 tried a series of capital trials; is that correct?

22 A: I understand that he did.

23 Q: Were you aware of his success in that?

24 A: I think -- I think he -- I learned that he had gotten
25 one acquittal in a -- in a capital case. So he and I were --

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1 we shared that. As far as I'm aware, maybe there might be
2 one or two others in the modern era of the death penalty --
3 reinstatement of the death penalty since the late '70s in
4 South Carolina.

5 Q: And that was all prior to Mr. Stanko's --

6 A: Yes.

7 Q: -- appointment; correct?

8 A: Yes.

9 Q: And with your experience, were you aware of the makeup
10 of the capital trial team that the ABA presents as its --

11 A: Yes. I didn't spend a lot of time -- I was aware of it.
12 I didn't spend a lot of time on it simply because we relied
13 more on case law. I had spent several years doing appellate
14 work. I probably represented 500 to a thousand criminal
15 defendants at the appellate level.

16 And so based -- and understand at the Office of
17 Appellate Defense, even though I wasn't personally doing a
18 particular death penalty case as counsel of record, my office
19 was. And I had a staff of seven or eight attorneys who did
20 that work, in addition to a contractor that we had, David
21 Brock, at the time who did the majority of the capital cases
22 in the early '80s. But by the time the mid-80s came around,
23 pretty much everybody in Appellate Defense was doing --
24 pretty much everyone was doing death penalty work at the
25 direct appeal stage.

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1 Q: So am I to understand that David Brock was doing capital
2 work at Appellate Defense in South Carolina at the same time
3 that you were employed there?

4 A: Yes.

5 Q: And you had a mitigation investigator, Dale Davis, in
6 this -- in Mr. Stanko's trial; correct?

7 A: Yes.

8 Q: And your fact investigator was Ms. Vicki Childs?

9 A: Yes.

10 Q: And did you retain a separate person to testify about
11 Mr. Stanko's social history?

12 A: I think Dr. Califf testified. Now, I knew her from
13 having seen her testify in Horry County for a number of years
14 prior to the Stanko case.

15 And so I wanted Dale to testify in this case. She
16 didn't perceive that to be her job. I mean she did a lot --
17 a lot of research, of course, but we took Ms. Davis's work
18 and make that available to Dr. Califf and she relied on that,
19 plus some additional information that she had sought out in
20 the last couple of -- I can't remember exactly how long she
21 had worked on the case, but I know she spent some time doing
22 some background information on her own in addition to what
23 Dale Davis had done.

24 Q: What do you recall -- what do you recall was the reason
25 that Dale Davis would not have been able --

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1 A: I don't recall.

2 Q: -- to present the social history?

3 A: I don't recall.

4 Q: Do you recall that Dale Davis did, in fact, testify
5 twice during the penalty phase of this trial?

6 A: At the Georgetown case?

7 Q: At the Georgetown case.

8 A: No. I can't recall that. Now, that might've been. She
9 might've changed her mind and probably Gerald Kelly handled
10 that. If I -- if I recall correctly, had that been my
11 understanding all along, I probably wouldn't have gotten
12 Evelyn involved -- Dr. Califf involved in the case, but I
13 felt like at the point that we hired Dr. Califf, it was
14 pretty clear in my mind that Ms. Davis didn't want to testify
15 about that particular information at that time in the trial.
16 So it's for that reason that we got Dr. Califf involved.

17 Q: But Ms. Davis, to your understanding, would have had the
18 information about how all of the social history records were
19 collected?

20 A: Yeah. Because I think she's -- she's the primary source
21 for collecting -- collecting of that information.

22 Q: And you also began consulting with your medical experts
23 to develop your theory of the defense; is that correct?

24 A: Yes.

25 Q: And do you recall Dr. Albiniaak was the first doctor that

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1 you got in touch with?

2 A: Well, he could've been because we had used him on a lot
3 of occasions in criminal cases in Horry County. So it's --
4 Dr. Albiniaak and Dr. Thrasher I reached out to pretty quickly
5 --

6 Q: And were --

7 A: -- at roughly the same time.

8 Q: I'm sorry. Were both of those doctors local doctors?

9 A: Yes.

10 Q: Did you perceive a benefit --

11 A: Yes.

12 Q: -- to consulting with local doctors?

13 A: Yes. Sure.

14 Q: What was that benefit?

15 A: Well, the jury would -- would know of them, you know, as
16 opposed to bringing someone in from out-of-state or, you
17 know, from across the country. I think it would be
18 beneficial to have a local expert that the jury might know,
19 you know, or at least have heard of and be in a position to
20 make a better -- I think they just might be in a position to
21 be more accepting of that testimony as opposed to Dr. Wu, for
22 example, from California, even though he was with the
23 National Institute of Health, you know, as an expert when it
24 came to scans.

25 Q: With Dr. Thrasher, do you recall the diagnosis that he

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1 gave in this case?

2 A: I don't recall precisely. I can't tell you language. I
3 think it was -- I don't -- I don't want to say because, at
4 this point in time, I don't recall precisely what he said.

5 Q: Would it surprise you that Dr. Thrasher diagnosed Mr.
6 Stanko with antisocial personality disorder?

7 A: I think -- yeah. At first, I thought -- I misunderstood
8 you to say Sachy at that point. Dr. Thrasher, yeah, I
9 understand that, yes.

10 Q: Okay. And do you have an understanding of antisocial
11 personality disorder as a mitigating factor in South
12 Carolina?

13 A: Well, yes. You know, as an attorney, yes, I understand
14 that it could be -- could be considered as a mitigating
15 factor, of course, but I think it depends on the way it's
16 presented and how it's pursued.

17 Q: Do you recall that that was established in the case of
18 Ricky Tim Caldwell?

19 A: Ricky Caldwell? Did I represent him?

20 Q: That I don't know.

21 A: Okay. It just sounds familiar.

22 Q: And so Dr. Thrasher recommended that you seek out
23 consultation from Dr. Sachy?

24 A: Yes.

25 Q: Is that correct?

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1 A: Yes. That's how I knew of Sachy to begin with.

2 Q: At what point during these consultations with Albiniak
3 and Thrasher and then Sachy did you develop your defense
4 theory of wanting to show images of Mr. Stanko's brain?

5 A: I wanted to do that from the time that we represented
6 Boyd Meekins. I felt like the first time I talked to Stephen
7 and he told me he had blacked out, I wanted to know why. You
8 know, I wanted to know what was happening in his brain, and I
9 explained that to Dr. Thrasher and he's the one that put me
10 on to Sachy. He said he can show how the brain is
11 functioning at that point.

12 Q: What benefit did you think you could derive at a jury
13 trial from demonstrating how the brain worked?

14 A: Well, I thought it would be an effective way to present
15 the evidence. You know, a hundred years ago when -- or
16 longer when we were talking about insanity, when the law was
17 talking about insanity, you know, there was no technology
18 available to look at how the brain functioned at that time.

19 There is now, and I think it was a disservice to say
20 this is junk science. Of course, the medical and
21 pharmaceutical companies, everybody uses -- if you have a
22 brain tumor, you're going to look at a scan to see what's
23 happening with it. I don't see any reason why we can't use
24 brain scans in criminal cases.

25 Q: Now, did you also meet with Pam Crawford?

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1 A: I think so.

2 Q: Do you --

3 A: Now, listen. I -- I had used her in my other cases. So
4 I'm not sure if I may have. I believe we did in this case,
5 but I'm not a hundred percent sure.

6 Q: So you don't recall what you might've consulted with her
7 regarding?

8 A: I remember her saying that she wasn't familiar with the
9 technology, the scans and that kind of thing. So I think we
10 probably did discuss the case and we didn't use her for that
11 reason.

12 Q: Did you meet with Tora Brawley?

13 A: I think so.

14 Q: Do you recall what you would've met with Ms. Brawley
15 about?

16 A: It would have had to do with the psychology because
17 we've used Dr. Brawley in other cases prior to Stephen's
18 case. So it would have been along those lines. Again, we
19 didn't use her either because we didn't feel like it fit with
20 the scan technology or she didn't feel like she was
21 comfortable in going into that area. I don't remember which.

22 Q: Do you recall whether Dr. Brawley diagnosed Mr. Stanko
23 with antisocial personality disorder?

24 A: I think she probably did.

25 Q: Do you recall her testifying to that on behalf of the

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1 State at trial?

2 A: I think so.

3 Q: So you were aware that Mr. Stanko had been diagnosed by
4 more than one doctor with antisocial personality disorder?

5 A: Yes. In fact, I think everybody who examined Stephen
6 agreed with that.

7 Q: Did that assist you in forming your theory of the
8 defense?

9 A: Yeah, it did. And each step of the way, as the evidence
10 developed, it fell more in line with what the theory was. I
11 mean Stephen -- I don't -- I don't believe Stephen -- I don't
12 think his brain was functioning properly nor in a healthy
13 fashion at the time he committed these acts.

14 Q: And so is it fair to say that when you consulted with
15 additional experts about the imagery of Mr. Stanko's brain
16 that you were looking for a medical explanation for his
17 personality disorder?

18 A: Yes. And substantiating physical evidence too, which
19 the scans could show. They could document what the opinions
20 were.

21 Q: Were you open to the potential for other diagnoses for
22 Mr. Stanko?

23 A: Yes. Certainly.

24 Q: Do you recall whether this was a factually difficult
25 case as far as the guilt phase is concerned?

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1 A: No, it wasn't.

2 Q: Is that because guilt was not necessarily a question?

3 A: When you say guilt, I think -- let's don't confuse that
4 with having committed the acts. Okay? Because guilt implies
5 that there was conscious awareness of what he was doing. I
6 don't think he was. And you know if you go back and look,
7 Stephen -- look at the crime that Stephen was in prison for
8 to begin with. It was when he assaulted his girlfriend, a
9 live-in girlfriend down in --

10 Q: Berkeley County?

11 A: Berkeley County. When she testified -- first of all,
12 when Stephen explained to me that case, the facts of that
13 case, I thought, well, it's odd that he would get a 10-year
14 sentence for that, and it just doesn't make any sense to me.

15 But when she testified at trial, it was clear to me that
16 he was blacked out at that time. He had her by the hair of
17 the head dragging her down the hallway singing, you know, as
18 he was about to strap her into that chair in the kitchen, if
19 I remember correctly. He wasn't -- he was not in his right
20 mind even then, you know, 10 years or 8 and 1/2 years before
21 this particular incident.

22 Q: And how does that compare to the facts of the Ling
23 incident specifically?

24 A: It fits squarely within what happened here, and I think
25 that we were correct in the strategy that we chose at that

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 time. You know, I don't -- I don't think it matters if it's
2 as high as 99 percent of the time that the defense is
3 rejected. I think that the facts here, accompanied by the
4 scans and the video evidence that was put together, I think
5 it justifies the defense in the case.

6 Q: And did Dr. Thrasher testify at Mr. Stanko's trial that
7 he lacked the capacity to conform at the time of the Ling
8 crimes?

9 A: I think he testified to that in the Georgetown case.

10 Q: Are you aware of any duty that you have as a criminal
11 defense attorney to second-guess the opinions of experts that
12 you consulted with?

13 A: No. I think -- no. I'll just -- no.

14 Q: Are you aware that psychopathy as a term is a previous
15 term that has been used in years past in conjunction with a
16 diagnosis of antisocial personality disorder?

17 A: I think so.

18 Q: At what point did you get in touch with Dr. Joseph Wu in
19 California?

20 A: I think that was after Dr. Sachy had informed -- or had
21 told me about him and it was -- it was because of Dr. Sachy's
22 reference that I went to Dr. Wu. Now, there was another
23 individual that Dr. Wu used, but I can't recall his name.
24 And we didn't -- the person who actually collected the data
25 that Wu -- Dr. Wu used. I can't recall his name, but we

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 didn't call him at trial.

2 Q: Do you recall whether Dr. Einhorn was used to conduct
3 the actual PET scan of the brain?

4 A: No. He -- he did the performance test, continuous
5 performance test, while MUSC did the scan.

6 Q: Did you get in touch with Dr. Wu yourself or --

7 A: Yeah.

8 Q: You did?

9 A: At some point. I'm not -- I might not have been the
10 first person from our defense to do it, but I do remember
11 contacting him, yes.

12 Q: And do you recall what exactly you retained him to do?

13 A: To put together the video. If you look at the -- I'm
14 sure you've seen the video evidence that we had at trial on
15 the CD. He was to put that together so that we could use it.

16 Q: Was he sought after to evaluate Mr. Stanko himself?

17 A: I -- I don't think so, but at this point, I don't
18 recall. I don't -- I don't -- I don't think so.

19 Q: Did Dr. Wu offer you any specific diagnosis?

20 A: No, not that I recall. Now, listen. In the transcript,
21 it might show otherwise. I'm just trying to -- I don't
22 believe that was Dr. Wu's job in the case.

23 Q: Do you recall that Dr. Wu opined that there was a
24 frontal lobe abnormality?

25 A: Oh, yes.

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 Q: On the PET scan?

2 A: Yes.

3 Q: Do you recall the specifics of that and if you could
4 please explain that to the Court, your understanding of it?

5 A: I think it would be difficult for me. What -- what I
6 understood and what the video showed was that the activity
7 that was occurring in Stephen's brain at the time of this
8 scan when his mind was fully engaged, when his brain was
9 fully engaged at that point, it showed a level of activity in
10 Stephen's brain that was not normal. It was below -- well
11 below what it should have been in terms of a normal scale.

12 That is the same area that would have regulated that
13 impulse coming out of the limbic system is the way I
14 understood it. Because Stephen's brain didn't operate or
15 didn't function properly there, that -- that impulse is what
16 drove his conduct. It wasn't an analysis in his frontal
17 lobes that would have occurred in a normal, healthy brain,
18 and that's why he committed the offense and that's why he
19 blacked out and doesn't remember it. At least that's what I
20 understood.

21 Q: Did Dr. Wu's opinion to you dovetail with the diagnosis
22 given by Dr. Thrasher?

23 A: Yes.

24 Q: Did it dovetail, in your opinion, with the diagnosis
25 given by Dr. Sachy?

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 A: Yes.

2 Q: Did it enhance those opinions?

3 A: Yes. It showed -- it demonstrated visually what their
4 opinions were based on.

5 Q: Did Dr. Wu recommend that you do any other type of
6 evaluation or testing of Mr. Stanko?

7 A: He might have. He might've suggested Dr. Gur. I don't
8 recall.

9 Q: How did you get in touch with Dr. Gur?

10 A: Right now, I don't recall. I'm sure we just called his
11 office.

12 Q: Was Dr. Gur retained to review the MRI of Mr. Stanko?

13 A: I can't recall all of the material that he had
14 available. Probably, but I don't know.

15 Q: And he did not testify at the Georgetown County trial
16 because he was --

17 A: He was out of the country. At that time, some terrorist
18 group, Hezbollah or somebody over in that area, was engaged
19 militarily with Israel and he had a need to be there at that
20 time, and that's why he was out of the country.

21 Q: But was his report available to the rest of your
22 experts?

23 A: Yes.

24 Q: For the Georgetown trial?

25 A: Yes.

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 Q: Do you recall whether Dr. Sachy updated or amended his
2 report for use at trial once he was given --

3 A: He might have. Now that -- now that you mention it,
4 yes.

5 MS. SCRANTOM: I beg the Court's indulgence one moment.

6 BY MS. SCRANTOM:

7 Q: Mr. Diggs, was Mr. Stanko tried in Georgetown County in
8 August of 2006?

9 A: I think so.

10 MS. SCRANTOM: Your Honor, may I approach the witness?

11 THE WITNESS: I believe so.

12 THE COURT: I'm sorry. What was that?

13 MS. SCRANTOM: May I approach the witness?

14 THE COURT: Yes, ma'am. What exhibit number is that?

15 MS. SCRANTOM: This is marked for identification as
16 State's Exhibit 1.

17 THE WITNESS: Okay.

18 BY MS. SCRANTOM:

19 Q: Mr. Diggs, if you could, flip through that document and
20 tell me if you recognize it?

21 A: Yes. I think it's a report that Dr. Sachy did. It's
22 labeled updated; so I think it's an additional report that he
23 did for the trial of this case.

24 Q: And what is the date on that report?

25 A: July 22nd, 2006.

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 Q: Is that something you would've been aware of in time for
2 Mr. Stanko's trial?

3 A: Yes.

4 MS. SCRANTOM: Your Honor, this time we would move
5 State's Exhibit 1 into evidence.

6 THE COURT: Any objection?

7 MR. ANDERSON: No, sir, Your Honor.

8 THE COURT: Without objection, so admitted.

9 (WHEREUPON, State's Exhibit Number 1, report of Dr.
10 Sachy dated 7/22/2006, was admitted into evidence.)

11 MS. SCRANTOM: Thank you, Your Honor.

12 BY MS. SCRANTOM:

13 Q: Do you recognize from that document -- from that
14 document whether Dr. Gur's volumetric brain analysis data was
15 included --

16 A: Yes. It's --

17 Q: -- in the updated report?

18 A: It's referenced on page 4.

19 Q: Thank you, Mr. Diggs. Do you feel that you achieved one
20 or more medical opinions supportive of the insanity defense?

21 A: Yes. In fact, if you go back through the transcript
22 where Dr. Spicer testified as an expert for the State, he
23 admitted that Dr. Wu was telling the truth and not lying.
24 That there was definitely a problem.

25 Q: With the frontal lobe?

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 A: Yes.

2 Q: In that there was an inability to regulate --

3 A: Yes.

4 Q: -- impulse control?

5 A: Yes. In fact, we had to call Dr. Wu back after Dr.
6 Spicer literally took the stand and accused Wu of lying. We
7 had to bring -- Dr. Wu had already gone back to Irvine,
8 California. We had to bring him back just to rebut and say,
9 look, I'm not lying. I'm telling the truth. This is what it
10 shows.

11 Q: Do you recall if Dr. Wu referenced the volumetric brain
12 analysis in forming his own opinion?

13 A: I think so. I think so, but I'm not a hundred percent
14 positive. I'd have to go back and look at it.

15 Q: So after the presentation of these medical opinions, did
16 you get the mitigating factor charged to the jury that you
17 were seeking?

18 A: I think so.

19 Q: And you received jury charges on both NGRI and GBMI --

20 A: Yeah.

21 Q: -- at the guilt phase?

22 A: Yeah.

23 Q: And did your experts testify that Mr. Stanko had an
24 abnormal brain?

25 A: Yes.

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 Q: Did they testify --

2 A: They explained why. They explained what that abnormal
3 -- abnormality was and how it contributed to this particular
4 incident.

5 Q: Did they testify that Mr. Stanko's brain abnormalities
6 led to impaired judgment in the areas of --

7 A: Yes.

8 Q: -- impulse control?

9 A: Yes. Yes.

10 Q: Did they testify, again, that he had a personality
11 disorder?

12 A: Yes.

13 Q: Did the State's expert similarly testify that Stanko had
14 a personality disorder?

15 A: Yes.

16 Q: Did your experts' testimony, in your opinion, as a whole
17 provide a medical reason for the personality disorder
18 diagnosis?

19 A: Yeah, I think so.

20 Q: Did they testify that the impairment could be linked to
21 Mr. Stanko's birth records?

22 A: Yes. The deprivation of oxygen at the time of his
23 birth.

24 Q: Did you feel that you had full access to all the
25 previous medical records that you needed?

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 A: Yeah. That's where Dr. Thrasher helped because, again,
2 he was at that base when Stephen was born, and so he could
3 provide the jury a little bit of background of what was going
4 on and what it was like at that time and, you know, how this
5 happened. I think Dr. Thrasher read those records and
6 explained to the jury what -- what had happened.

7 Q: Did any of the doctors that you consulted with come to
8 you and seek additional documentation that you had not
9 previously provided?

10 A: No, no. But certainly, all the information we had
11 available to us would have been available, had they asked for
12 it. There was certainly no reason for us to preclude access
13 to anything.

14 Q: Do you recall if one or more of your medical experts
15 testified that Mr. Stanko had been hit in the head --

16 A: Yes.

17 Q: -- with a bottle of beer?

18 A: Yes.

19 Q: Was that during his adolescence?

20 A: Yeah. Fifteen-ish, sometime around that age.

21 Q: As a criminal defense attorney, did you feel that you
22 had any other choice but to present this evidence in further
23 of Mr. Stanko's defense?

24 A: In my opinion, it would have been malpractice not to
25 present it. And I understand the statistics and know where

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 applicant is coming from, but I think as strong as the
2 evidence was that we had, now really confirmed by Dr. Spicer
3 when he said, yeah, he's telling the truth, you know, I think
4 it was appropriate. I think it would be a mistake not to
5 present that in the guilt phase, and I think if we hadn't
6 presented it, they would be here arguing about it.

7 Q: Was Mr. Stanko always forthcoming with you in your
8 meetings?

9 A: As far as I know. Except -- and, you know, let's go
10 back to the time when he strapped his girlfriend in the
11 chair. He wasn't accurate about what happened, but I think
12 in his mind he was. I don't think he was intentionally lying
13 about it. I think that's what he recalls.

14 Q: And do you recall that, leading up to the Georgetown
15 County crimes, Mr. Stanko had been involved in a series of
16 cons --

17 A: Yes.

18 Q: -- and schemes?

19 A: Yes.

20 Q: And that was -- those were against local --

21 A: Yes.

22 Q: -- laypeople?

23 A: Correct. Right.

24 Q: And do you recall knowing whether he was essentially
25 about to be found out?

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 A: Yeah. He would have been.

2 Q: And did you present that testimony at the penalty phase
3 of his case?

4 A: I believe so.

5 Q: What would you consider mitigating about Mr. Stanko's
6 personal history?

7 A: Well, the fact he was a smart kid. He was the prom
8 king, you know, at his high school senior prom, which is kind
9 of like a double-edged sword though because if he was so
10 exemplary, you know, and extraordinary in school, how did
11 this happen? So I think if you rely solely on his life
12 history, it creates a problem.

13 Q: And do you recall putting up the Georgetown County
14 prison guards at trial?

15 A: Yes.

16 Q: And they all testified favorably for Mr. Stanko?

17 A: Yes.

18 Q: And do you recall asking Dr. Sachy during the penalty
19 phase what someone with antisocial personality disorder --
20 how they would react to prison life?

21 A: I probably did, if it's in the transcript. I mean I
22 don't specifically recall it, but it sounds like something I
23 would've asked.

24 MS. SCRANTOM: I beg the Court's indulgence.

25 THE COURT: Yes.

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 BY MS. SCRANTOM:

2 Q: Mr. Diggs, do you still have that portion of the closing
3 argument there? I believe --

4 A: I have Volume 4 of 8.

5 Q: Okay.

6 MS. SCRANTOM: May I approach the witness, Your Honor?

7 THE COURT: Yes, ma'am.

8 BY MS. SCRANTOM:

9 Q: So earlier, opposing counsel had you read page 3389,
10 lines 5 through 11, but I was wondering if you could read
11 page 3389, the rest of that page, and the first two
12 paragraphs on the following page for the Court?

13 A: Are you talking about the part that starts with the
14 yellow.

15 Q: After the conclusion of the highlighted portion.

16 A: All right. There are some guidelines in considering
17 statutory aggravating circumstances, mitigating
18 circumstances, in reaching your verdicts on the penalty in
19 this case. Judge Jefferson will review those guidelines with
20 you in the course of her charge.

21 However, I want to give you a brief roadmap of my own so
22 you can begin thinking. You can start at least understanding
23 the process of how you are to reach this verdict, how you are
24 supposed to answer the questions.

25 First, and this is a must, this is a requirement under

WILLIAM DIGGS - CROSS BY MS. SCRANTOM

1 South Carolina law. The first question for you to answer in
2 this case was the part of the case -- are there any statutory
3 aggravating circumstances? Because if you don't find any
4 statutory aggravating circumstances, then the death penalty
5 is not appropriate and it would be your duty, it would be
6 your responsibility to say no statutory aggravating
7 circumstances, life without parole. That's the right answer
8 if you find no statutory aggravating circumstances.

9 However, if you find the existence of at least one, one
10 is the -- one -- only one is required. If you find the
11 existence of at least one statutory aggravating circumstance,
12 then it is your responsibility to consider all the other
13 evidence, all the circumstances, the mitigating
14 circumstances, everything, and to reach a verdict regarding a
15 penalty that is just, a verdict of life without parole or
16 death.

17 Q: Thank you, Mr. Diggs.

18 A: All right.

19 Q: Do you believe that that is an adequate reflection of
20 South Carolina law?

21 A: I think so.

22 Q: Do you find that objectionable?

23 A: In this -- in this context, I don't at this point.

24 Q: Thank you, Mr. Diggs.

25 MS. SCRANTOM: One moment, Your Honor.

WILLIAM DIGGS - REDIRECT BY MR. ANDERSON

1 No further questions. Thank you.

2 THE COURT: Any redirect?

3 MR. ANDERSON: Very briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. ANDERSON:

6 Q: Bill, I believe you talked about -- is it Marvin Smith
7 or Marion Smith?

8 A: Marion Smith.

9 Q: And you got an acquittal in that case and then --

10 A: Yes.

11 Q: -- in the Meekins case, you got a guilty, but the jury
12 decided on life?

13 A: No. It was a hung jury.

14 Q: Hung jury? In that case, no one said either Mr. Meekins
15 or Mr. Smith was a psychopath, did they? In that case, no
16 one said --

17 A: In the Meekins case, no, he was not called a psychopath.

18 Q: And no one said that they were similar to alligators or
19 crocodiles or caiman in either one of those cases, did they?

20 A: No.

21 Q: In that case, no one compared him to the devil, did
22 they?

23 A: No, they didn't.

24 Q: In that case, no one said they're like Ted Bundy or
25 anyone like that and didn't bring up the movie *Psycho*, did

WILLIAM DIGGS - REDIRECT BY MR. ANDERSON

1 they?

2 A: I don't think so.

3 Q: Okay. Now, *48 Hours* was here during the trial in
4 Georgetown; is that right?

5 A: It's my understanding they were. I --

6 MS. SCRANTOM: Objection, Your Honor. I believe that's
7 outside of the scope of my cross-examination.

8 THE COURT: Objection sustained.

9 BY MR. ANDERSON:

10 Q: Prior to this case being heard, did you argue that the
11 insanity statute was unconstitutional?

12 A: I think we did.

13 Q: And that was because it didn't fit with what your expert
14 were going to say?

15 A: It wasn't -- no. Not at -- I don't recall that at all.
16 I think it was too narrow, in my opinion, and we wanted to
17 broaden the statute.

18 MR. ANDERSON: That's all the questions I have, Judge.

19 THE COURT: Any recross?

20 MS. SCRANTOM: No, Your Honor.

21 THE COURT: Mr. Diggs, you may step down, sir.

22 THE WITNESS: Thank you, sir.

23 THE COURT: All right. As he is stepping down, we are
24 going to take a few-minute break.

25 MR. ANDERSON: Judge, any objection or no objection to

1 being released from subpoena?

2 MS. SCRANTOM: None from us.

3 THE COURT: No objection. Sir, you are free to go. You
4 have no further responsibility. Thank you for being here.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: All right. We'll stand down just a few
7 minutes.

8 (WHEREUPON, there was a break in the proceedings from
9 3:24 p.m. until 3:36 p.m., after which the proceedings
10 resumed as follows.)

11 THE COURT: All right. Is the State ready to proceed?

12 MS. SCRANTOM: Yes, Your Honor.

13 THE COURT: Applicant?

14 MS. VANN: Thank you, Your Honor. At this time, we'd
15 call Ms. Dale Davis.

16 THE COURT: Okay.

17 THE BAILIFF: Place your left hand on the Bible and
18 raise your right hand and face the young lady.

19 THE WITNESS: Wait a second. Her?

20 THE BAILIFF: Yes.

21 THE WITNESS: Oh.

22 THE CLERK: Do you solemnly swear or affirm that the
23 testimony you are about to give is the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

DALE DAVIS - DIRECT BY MS. VANN

1 THE CLERK: Thank you. Please be seated and then state
2 and spell your full name for the record.

3 THE WITNESS: Dale Davis, D-a-v-i-s. It's Dale,
4 D-a-l-e.

5 DALE DAVIS, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. VANN:

9 Q: Ms. Davis, were you involved in Mr. Stanko's 2006
10 Georgetown County capital trial?

11 A: Yes.

12 Q: And how were you involved in that case?

13 A: I was hired to do the mitigation preparation for
14 mitigation phase.

15 Q: And are you currently a mitigation specialist?

16 A: No.

17 Q: What are you currently doing?

18 A: I'm retired.

19 Q: How long were you a mitigation specialist and when?

20 A: About seven or eight years prior to that.

21 Q: And how many capital cases had you been involved in as a
22 mitigation specialist?

23 A: I think around 30 at that time.

24 Q: Where were those cases?

25 A: They were in North Carolina, South Carolina, and

DALE DAVIS - DIRECT BY MS. VANN

1 Georgia.

2 Q: Were they all at a trial level?

3 A: There were federal, state, military, but a lot of them
4 pled out so they did not go to trial.

5 Q: Did you work on any post-conviction cases as well?

6 A: I did, I believe.

7 Q: And did you attend any training specifically focused on
8 capital mitigation?

9 A: Yes. Over a number of years, I went to Life in the
10 Balance, which is specifically training for death penalty
11 cases, and there is a section for attorneys and a section for
12 mitigation specialists.

13 Q: Did you go to any trainings in other states?

14 A: In other states? Those were all in other states.

15 Q: Okay.

16 A: But I also did some with mental health. There were a
17 variety of them, but they all linked around things that apply
18 to mitigation.

19 Q: Did you go to any trainings specifically in South
20 Carolina?

21 A: There was a training of Bring Your Own Case training in
22 Charleston that I -- that was put on federally, I believe.

23 MS. VANN: May I approach the witness, Your Honor?

24 THE COURT: Yes, ma'am.

25 BY MS. VANN:

DALE DAVIS - DIRECT BY MS. VANN

1 Q: I'm handing you --

2 A: I'm sorry my voice sounds funny.

3 Q: Okay.

4 A: This makes me nervous.

5 Q: Do you recognize this document, Ms. Davis?

6 A: It's an email that I sent to Bill Diggs about the
7 seminar.

8 Q: And this is the Bring Your Own Case training in
9 Charleston at your convention?

10 A: Right. And I wanted to bring Stephen's case, but
11 because of the confidentiality issues, I had to have the
12 attorney's permission to do that and what you would really
13 like is for the whole team to go so.

14 Q: And so were you using this email to ask Mr. Diggs if he
15 would attend?

16 A: Yes.

17 MS. VANN: Your Honor, at this time, I would like to
18 move to admit this as Applicant's Exhibit 16.

19 THE COURT: Any objection?

20 MS. SCRANTOM: No objection.

21 THE COURT: Without objection, so admitted.

22 (WHEREUPON, Plaintiff's Exhibit Number 16, email re:
23 mitigation seminar, was admitted into evidence.)

24 MS. VANN: May I approach, Your Honor?

25 THE COURT: Yes.

DALE DAVIS - DIRECT BY MS. VANN

1 BY MS. VANN:

2 Q: I'm handing you what is marked as Applicant's 17. Do
3 you recognize this document, Ms. Davis?

4 A: Yes.

5 Q: And what is this document?

6 A: It's an email that I sent to Bill Diggs saying that I
7 needed his input right away about the capital defense
8 training that was scheduled in Charleston and saying that I'd
9 sent him the materials earlier and asked if he wanted to
10 attend, but I didn't hear back. The fact investigator was
11 going.

12 Q: And did you ultimately attend the seminar?

13 A: Yes, I did.

14 Q: And was there -- do you recall if there was any cost
15 with it?

16 A: There was no cost.

17 Q: Did Mr. Diggs end up attending with you?

18 A: No.

19 Q: Or Mr. Kelly?

20 A: No.

21 Q: Who did you say went with you?

22 A: The fact investigator and I attended.

23 Q: And that was Vicki Childs?

24 A: Yes.

25 MS. VANN: At this time, we would move to have this

DALE DAVIS - DIRECT BY MS. VANN

1 admitted as Applicant's Exhibit 17.

2 MS. SCRANTOM: No objection.

3 THE COURT: Without objection, so admitted.

4 (WHEREUPON, Plaintiff's Exhibit Number 17, email re:
5 mitigation seminar, was admitted into evidence.)

6 BY MS. VANN:

7 Q: Do you recall when you got involved in this case?

8 A: I believe from time sheets, it might've-- it was
9 December or January, December 2005 or maybe January 2006.

10 Q: Would you have sent a notice or information to Mr. Diggs
11 with your CV?

12 A: Yes. I sent a letter.

13 Q: And do you recognize this document?

14 A: Yes.

15 Q: And what is this?

16 A: This is to Mr. Diggs saying that I had spoken with
17 Gerald Kelly and that he asked me to send the information.
18 And since Stephen was raised in Goose Creek, which is very
19 near Charleston, I mentioned that that would cut down on
20 travel costs for some of it.

21 Q: And did you attach your CV to this?

22 A: Yes.

23 Q: And does it list the trainings that you had attended
24 prior to the time that you sent this?

25 A: Yes.

DALE DAVIS - DIRECT BY MS. VANN

1 MS. VANN: I would move to admit this as Applicant's
2 Exhibit 18.

3 MS. SCRANTOM: No objection, Your Honor.

4 MS. VANN: I'm sorry.

5 THE COURT: Without objection, so admitted.

6 (WHEREUPON, Plaintiff's Exhibit Number 18, Dale Davis
7 letter and CV, was admitted into evidence.)

8 BY MS. VANN:

9 Q: Is it safe to say you had significant capital experience
10 by the time you were involved in Mr. Stanko's case?

11 A: Yes.

12 Q: When you work on a capital case as a mitigation
13 investigator, what is your typical role in preparing the
14 case?

15 A: Typically, I would interview the client extensively and,
16 based on the information given, I would seek friends, family,
17 teachers, anyone in his background that was -- that I could
18 locate, school records, medical records, any kind of records
19 that I could find associated with him, put those together,
20 provide those to the attorneys, sometimes summarizing them
21 depending on the length of them.

22 Q: And would you expect that information to stay with the
23 attorneys or go to another party?

24 A: No. Well, it should go. The -- they should go to the
25 experts who are going to evaluate him so that they have

DALE DAVIS - DIRECT BY MS. VANN

1 background information and all the records associated.

2 Q: In a typical case, would you work with the experts who
3 were preparing to testify?

4 A: Well, typically, I was the one who -- working with the
5 attorney, but I would just be the one to contact the expert
6 and set up appointments and arrangements for the jail and
7 that sort of thing, and we would have team meetings where
8 sometime the experts would be there. If not, then whatever
9 the experts' reports were, what was going on with that, the
10 attorney would report that back to me and other team members
11 at meetings.

12 Q: And I believe you said you got involved in this case
13 because some of the family was near you; is that correct?

14 A: Well, no. I got involved in it, I'm sure, because I had
15 worked some other cases with Gerald Kelly and he contacted
16 me. It just was coincidental that it was near where I lived.

17 MS. VANN: May I approach, Your Honor?

18 THE COURT: Yes, ma'am.

19 BY MS. VANN:

20 Q: Do you recognize this document that I just handed you?

21 A: I do. And I actually got involved in September of 2005.

22 Q: September? And what is this document?

23 A: It's my time sheets and invoices.

24 Q: And would you have kept this time log while you were
25 working on the case?

DALE DAVIS - DIRECT BY MS. VANN

1 A: Yes.

2 Q: And do you think this is an accurate representation of
3 the time that you spent on Mr. Stanko's case?

4 A: All but toward the end.

5 Q: And why is that?

6 A: Because I was very negligent in sending the report of
7 the spending during the trial and the case had already closed
8 out with OID and so -- you know.

9 Q: So it's likely you worked more hours than is actually
10 listed in here?

11 A: Yes.

12 MS. VANN: I'd move to admit this as Applicant's Exhibit
13 19.

14 MS. SCRANTOM: No objection.

15 THE COURT: Without objection, so admitted.

16 (WHEREUPON, Plaintiff's Exhibit Number 19, Dale Davis
17 time sheets/invoices, was admitted into evidence.)

18 BY MS. VANN:

19 Q: And what was the makeup of the team preparing for Mr.
20 Stanko's trial?

21 A: Mr. Diggs was lead attorney, Gerald was second chair
22 and, as I understood it, Gerald was handling the mitigation
23 phase and Mr. Diggs was handling primarily the guilt or
24 innocent phase.

25 Q: And what were you asked to do specifically in this case?

DALE DAVIS - DIRECT BY MS. VANN

1 A: Prepare for mitigation.

2 Q: Who did you report to mainly?

3 A: Well, everything that I did, I sent to both attorneys.

4 I probably spoke to Gerald more often than Mr. Diggs.

5 Q: Who on the team did you feel was responsible for
6 directing the strategy of the defense?

7 A: The -- the attorney is responsible for that, although
8 it's generally a discussion. You know, that's the point I
9 think of having a team is that you gather things to begin
10 with and then once you've got some information to work with,
11 you discuss it and think what will work and what won't, that
12 would kind of thing.

13 Q: Is that what happened in this case?

14 A: Not really.

15 Q: What did happen in terms of developing the strategy for
16 the defense?

17 A: I had very little contact with the experts. So I really
18 don't know a lot of those things, but Mr. Diggs had kind of
19 made up his mind early on the way he wanted to go with it and
20 that was the way it went.

21 Q: And how would you describe the defense theory that was
22 used at the trial?

23 A: While Stephen certainly has brain damage, I believe that
24 based on some other things, I didn't ever dispute that, but
25 the presentation of that information -- I thought it was very

DALE DAVIS - DIRECT BY MS. VANN

1 hard to make a case for life based on some of the information
2 that came out of it.

3 Q: What information are you talking about specifically?

4 A: The reference to his being a psychopath and comparing
5 him to serial killers and being called an alligator,
6 crocodile, whatever it was that was making reference to a
7 very basic part of our brain.

8 Q: Was the plan to use that evidence in support of a not
9 guilty by reason of insanity defense?

10 A: I actually thought it was insanity, but it could've been
11 NGRI. I'm not sure.

12 Q: When did you first learn about the theory of the
13 defense?

14 A: When did I first learn -- I'm sorry.

15 Q: When did you first learn what the defense theory would
16 be?

17 A: In the first meeting we had.

18 Q: The first meeting you had with who?

19 A: With Gerald and Mr. Diggs and Vicki and I.

20 Q: Was that before you had conducted your mitigation
21 investigation?

22 A: As far as I knew, it was before anything had been done,
23 but it was certainly before I had done anything.

24 Q: And was that a team decision to go in the direction?

25 A: That was not my impression and it certainly was not mine

DALE DAVIS - DIRECT BY MS. VANN

1 and I know it was not Vicki Childs' and it was my impression
2 it was not Gerald's.

3 Q: And so Mr. Diggs, as lead counsel, did he direct that --
4 direct the team toward using that strategy?

5 A: Yes.

6 Q: As far as you were aware, were any other expert
7 evaluations conducted before he had determined that strategy?

8 A: Like I said, I just -- I don't have any idea when they
9 were conducted or how or reports from them or any of that
10 because he just didn't share that information, other than
11 that he was having it done.

12 MS. VANN: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. VANN:

15 Q: Would you take a look at this email? Do you recognize
16 this email?

17 A: Yes.

18 Q: Can you describe it?

19 A: It's stating that I had been working on another case
20 with another attorney in Columbia when Donna Schwartz-Watts
21 mentioned that they had been contacted about this case and
22 additionally that they had decided not to use Dr. Brawley.
23 And I was -- had sent to Hall to get the raw data because
24 they will only release that to the neuropsychologist to have
25 that sent when I thought Dr. Deysach was going to see him,

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1 but since they -- he had -- and I'm not sure which one of
2 them was a neuropsychologist, but that I would have that raw
3 data sent to him instead.

4 Q: And to your knowledge, did Dr. Schwartz-Watts, Dr.
5 Brawley or Dr. Deysach do an evaluation on behalf of the
6 defense in this case?

7 A: No.

8 MS. VANN: I move to admit this as Applicant's Exhibit
9 20.

10 THE COURT: Any objection?

11 MS. SCRANTOM: No, Your Honor.

12 THE COURT: Without objection, so admitted.

13 (WHEREUPON, Plaintiff's Exhibit Number 20, email, was
14 admitted into evidence.)

15 BY MS. VANN:

16 Q: Do you know where Mr. Diggs got the idea for the defense
17 that he raised in this case?

18 A: I cannot say that specifically. I just know what I
19 think, if I'm allowed to say that.

20 Q: What do you think it is?

21 MS. SCRANTOM: Objection. Calls for speculation.

22 THE COURT: Sustained.

23 BY MS. VANN:

24 Q: Did you do any research about Dr. Sachy after you heard
25 that he would be involved in this case?

DALE DAVIS - DIRECT BY MS. VANN

1 A: Yes. I recall seeing his name in an article I had
2 written about a case in Augusta, and I looked that back up
3 and sent that information, along with some other things, to
4 everyone on the team.

5 Q: And is this an email with information about Dr. Sachy?

6 A: Yes.

7 Q: Who did you send it to?

8 A: I sent it to Bill Diggs, Gerald Kelly, Bill's assistant,
9 and Vicki Childs.

10 Q: When did you send it?

11 A: March 26th, 2006.

12 Q: And did you attach articles to this email about Dr.
13 Sachy?

14 A: Yes.

15 MS. VANN: Your Honor, I would move to have this
16 admitted as Applicant's Exhibit 21.

17 MS. SCRANTOM: No objection, Your Honor.

18 THE COURT: Without objection, so admitted.

19 (WHEREUPON, Plaintiff's Exhibit Number 21, email re: Dr.
20 Sachy, was admitted into evidence.)

21 BY MS. VANN:

22 Q: And does this email include information about Dr.
23 Sachy's involvement in the Rivera case in Georgia?

24 A: Yes.

25 Q: And what did you learn about the Rivera case in Georgia?

DALE DAVIS - DIRECT BY MS. VANN

1 A: That it was the same defense.

2 Q: And in this information, did you come across that Dr.
3 Sachy had diagnosed Mr. Rivera as a psychopath?

4 A: Yes.

5 Q: If you could, take a look at the second article that's
6 attached to this email. It's called "Doctors Argue Rivera's
7 Health."

8 A: Yes.

9 Q: Could you read the fourth paragraph into the record?

10 A: It's my opinion Mr. Rivera is a psychopath, Dr. Thomas
11 Sachy, a neuropsychiatrist who is now in private practice,
12 testified Monday while the jury was absent.

13 Q: And could you read the second paragraph or the -- I'm
14 sorry -- the next paragraph as well?

15 A: Many doctors have testified in Georgia courts that
16 defendants are psychopathic, devoid of moral, social values
17 or empathy, but Dr. Sachy will be the first to give the
18 expert opinion that the cause of psychopathic personality is
19 the decreased activity in the brain's frontal lobes, a
20 condition known as hypofrontality, normally caused by disease
21 or injury.

22 Q: And that was attached to your March 26th, 2006, email to
23 the defense team?

24 A: Yes.

25 Q: Do you know what the outcome of the Rivera case was?

DALE DAVIS - DIRECT BY MS. VANN

1 A: He got a death sentence.

2 Q: Do you know if Mr. Diggs considered any other theories
3 for a defense other than what he ended up going with?

4 A: If he did, he never discussed it with us.

5 Q: Did you feel like he was focused on this theory to the
6 exclusion of other evidence?

7 A: Yes.

8 Q: Did you ever express any concerns about using this
9 defense?

10 A: I did.

11 Q: And what was his response to that?

12 A: Well, I think it just kind of went over his head. I'm
13 not sure if he really heard what I was saying or got what I
14 was saying about it.

15 Q: And what were your specific concerns about using this
16 defense?

17 A: That you can't come in and describe your client in these
18 terms and expect anyone to care what happens to them, and the
19 whole purpose of mitigation is in the course of the trial to
20 show the humanity of the person and to make them care -- the
21 jury care what happens to them.

22 Q: And the terms you were concerned about, is one of those
23 specifically that they were using the term psychopath?

24 A: The psychopath, among the other things that I said
25 earlier.

DALE DAVIS - DIRECT BY MS. VANN

1 Q: And when you first heard about this theory and that they
2 planned to present this, what was your reaction to that?

3 A: Well, my first reaction to this defense was when I read
4 that article about the Augusta case just thinking I can't
5 imagine that somebody would think that was a defense. Like
6 I've said before, that's -- that's sort of the prosecution's
7 case.

8 Q: Now, at some point, did you send an email to Mr. Diggs
9 with information about using psychopathy at trial?

10 A: Probably.

11 Q: I will hand you another email. Can you describe the
12 email that I just handed to you?

13 A: Yes. It's an email dated December 19th, 2006, and this
14 was after the trial that I just thought that the team might
15 be interested in this article as it relates to Stephen's
16 defense because I knew that same defense was being used in
17 Horry County, and it's just got an article in there and I
18 took one paragraph out of it and underlined one particular
19 sentence.

20 Q: Could you read the portion that you specifically
21 underlined?

22 MS. SCRANTOM: Your Honor, before Ms. Davis continues, I
23 would lodge an objection as this email was notably sent after
24 Mr. Stanko's Georgetown County trial.

25 THE COURT: Objection noted, but I'm going to allow it.

DALE DAVIS - DIRECT BY MS. VANN

1 Go ahead.

2 BY MS. VANN:

3 A: New studies suggest that being labeled a psychopath
4 increases the likelihood that an offender will be locked up
5 indefinitely or even executed.

6 And that was Donna Schwartz-Watts' opinion in multiple
7 other trials that I worked on, cases that I worked on, was
8 that a jury was much more likely to give a death sentence if
9 a client is labeled a psychopath.

10 MS. VANN: I move to admit this as Exhibit 23.

11 THE COURT REPORTER: 22.

12 THE COURT: Subject to the State's objection, I'm going
13 to allow it.

14 MS. VANN: I apologize. It was Exhibit 22.

15 THE COURT: Correct.

16 (WHEREUPON, Plaintiff's Exhibit Number 22, email re:
17 psychopathy, was admitted into evidence.)

18 BY MS. VANN:

19 Q: Now, your role was to conduct a social history
20 investigation prior to the Georgetown trial. Can you
21 describe what specifically you did in this case?

22 A: I met with Stephen several times and got in touch --
23 went to his school, met with a number of teachers. He -- I
24 got yearbooks that -- where he was prominent in those
25 yearbooks and a number of clubs, and I went there and

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1 interviewed those people, his principal. I met with some
2 family members, one sister in particular, who gave me a lot
3 of information.

4 I got prison records from his previous incarceration. I
5 collected medical records. He had told me about getting hit
6 in the back of the head by a bottle that was thrown when, I
7 think, he was a senior in high school that had ended up with
8 him being unconscious in the emergency room. I found the guy
9 that was with him when that happened and spoke to him, and he
10 told me about it. His sister had accompanied him to the
11 emergency room. I documented that. I think -- I mean that
12 probably isn't all, but that was -- that's what you're mainly
13 doing.

14 Q: And did you pass this information along to the
15 attorneys?

16 A: Yes.

17 Q: How did you do that?

18 A: A lot of it by email just because of distance. I
19 normally make a notebook for me and one for them, but just
20 because of distance, I sent it email.

21 Q: What did you expect the attorneys to do with the
22 information that you passed along to them?

23 A: Well, typically a social worker is hired to read all of
24 that same information that I'm reading or other experts are
25 reading and, based on what she believes, she would contact

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1 the -- contact the people to verify the information so that
2 she's not testifying about something I said, and going
3 through the records to present on the stand a cohesive story
4 about the life of the person that would, in this case, talk
5 about when he was young, he was 11th in a class of 200+
6 students.

7 The good things, of course. I mean they're going to say
8 when things turned as well. I think they would have
9 described the incident that happened earlier that he went to
10 prison for was virtually identical to this situation.

11 They just -- they weave -- weave things into a story,
12 which always makes information more interesting and relevant.
13 While it's accurate, it's still cohesive in telling a story.

14 Q: Do you know if the information that you collected was
15 given to the experts in this case?

16 A: I assume it was, but I don't know that.

17 Q: Is there any -- are there any records that you know were
18 given to the experts?

19 A: The only one I know for sure that was given to the
20 experts was his birth records and his mom's records.

21 Q: When you are investigating a case, do you also consider
22 other possible explanations or information that is helpful to
23 perhaps give to the experts? And perhaps if I show you this
24 email --

25 A: Yes.

DALE DAVIS - DIRECT BY MS. VANN

1 Q: -- you'll know what I mean.

2 A: And sometimes I come across things when I'm doing
3 mitigation investigation that really is on a factual side,
4 and I will pass that on so that the fact investigator could
5 take that up.

6 Q: I just handed you --

7 A: Yes.

8 Q: -- another email. Do you recognize this?

9 A: Yes.

10 Q: Could you describe it please?

11 A: After I had spent a lot of time with Stephen and seeing
12 some of the things, I just -- I've never -- I just believe
13 that he had obsessive compulsive traits.' And part of my
14 training is that when you're talking to people and some of
15 the questions you ask are related to things that could be
16 indicative of some sort of mental illness and then you would
17 take that information and pass it on to an expert or someone
18 who could evaluate it further, but he just had these
19 documents when he was imprisoned that were so minute detailed
20 about getting up, going to the bathroom, getting dressed,
21 eating, I mean what he had for breakfast, and I mean it would
22 just be all these volumes of things.

23 And so I just thought because it had to do -- I mean we
24 knew that he had the frontal lobe issues. That that could
25 relate to some -- some other thing that might need to be

DALE DAVIS - DIRECT BY MS. VANN

1 investigated.

2 Q: And so did you send this email as a result of that?

3 A: Yes.

4 Q: And this describes hypergraphia that you thought may be
5 useful information for the experts to have?

6 A: Yes.

7 Q: When did you send this?

8 A: April 14th, 2006.

9 Q: Who did you send it to?

10 A: Jeff McKee, who is a neuropsychologist, I believe. I'm
11 not sure unless I thought he was going to be involved at that
12 point, but to Bill Diggs, Vicki Childs, Johanna. I'm not
13 sure why this didn't go to Gerald. Maybe I hit -- you know
14 how your computer finds things. I may have accidentally
15 clicked on Jeff McKee instead of Gerald.

16 MS. VANN: I would move to admit this as Applicant's
17 Exhibit 23.

18 THE COURT: Any objection?

19 MS. SCRANTOM: No, Your Honor.

20 THE COURT: Without objection, so admitted.

21 (WHEREUPON, Plaintiff's Exhibit Number 23, email re:
22 hypergraphia, was admitted into evidence.)

23 BY MS. VANN:

24 Q: Do you know if this information ever got passed along to
25 the experts?

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1 A: I don't know.

2 Q: Did you ever hear anything about it after you sent it?

3 A: No. The only time it came up was when I was in the -- I
4 think it was a witness room, but it was something that was
5 going on in the trial and I mentioned it to Dr. Sachy, but he
6 didn't seem to know anything about it.

7 Q: Did you ever meet with any of the experts in the case
8 before you got to trial?

9 A: No.

10 Q: And I believe you said that in other cases you worked on
11 you did usually work with the mental health experts and you
12 would've met with them as well; is that correct?

13 A: Well, I had contact with them and, through the attorney,
14 I did, but it was primarily mine with that was to arrange
15 appointments and to arrange things as opposed to meeting them
16 about what they were doing or what was going on.

17 Q: During your investigation, did you conduct any
18 interviews to assess Stephen's ability to adapt to living in
19 prison?

20 A: I think -- I don't know that I did any interviews on
21 that, but I know that -- I can't remember the man's name in
22 North Carolina -- Joe Makin [ph]. That I had a prison
23 adaptation person -- I had suggested we might need to get a
24 prison adaptation person because he had adjusted so well when
25 he was in prison.

DALE DAVIS - DIRECT BY MS. VANN

1 Q: And did you pass Joe Makin's name along to the team?

2 A: Yes.

3 Q: Did they ever discuss the possibility of retaining Joe
4 Makin or another similar expert?

5 A: Not that I remember. But I know very, very near the end
6 of the -- when the trial was very close and probably in the
7 course of the trial, I interviewed several people at the
8 Georgetown jail about his -- how he had been while he was in
9 jail here.

10 Q: Did you -- those were only at the Georgetown Detention
11 Center?

12 A: Yes.

13 Q: Did you interview any South Carolina Department of
14 Corrections employees that might have interacted with him
15 when -- during his first incarceration?

16 A: I don't think so.

17 Q: Do you recall what Evelyn Califf's role was in this
18 case?

19 A: He hired her to act in the role of social worker.

20 Q: What does the role of social worker mean?

21 A: As I described before what the purpose of a social
22 worker is in a trial. I had been kind of harping about
23 getting a social worker because you need them to -- in
24 addition to your experts, you need that person to do as I
25 described before, and I -- I'm not sure why, but that was who

DALE DAVIS - DIRECT BY MS. VANN

1 he hired to do that.

2 Q: And have you ever in your experience served as a
3 testifying social worker?

4 A: No. I'm not a social worker. I could not. I couldn't
5 do that. I couldn't do that testimony.

6 Q: So you wouldn't be qualified to testify?

7 A: No. And typically, the mitigation person does not
8 testify.

9 Q: Is it the typical course that the mitigation
10 investigator conducts the investigation and pulls all the
11 materials together and then gives that information to the
12 social worker to evaluate and present?

13 A: Right. And I -- and the only thing I've testified about
14 is mainly about the record collection and that I actually did
15 that and provided the information.

16 Q: I was going to ask you that. So you did testify at this
17 trial briefly. Do you recall testifying?

18 A: I recall testifying, but it was about the guy that got
19 -- about interviewing the guy that was with him when he got
20 hit in the head with a bottle.

21 Q: And would you have also testified about your attempts to
22 collect the records from that incident?

23 A: Probably in the course of that same testimony because
24 they -- he went to the Naval Hospital and it was closed, and
25 nobody -- I talked to a number of people and nobody seemed to

DALE DAVIS - DIRECT BY MS. VANN

1 know because the records weren't in Missouri where they would
2 normally be and nobody could really tell me what happened to
3 them.

4 Q: And is that testimony different from what a testifying
5 social worker would've testified to?

6 A: Oh, yes.

7 Q: Do you know who first determined the need to have a
8 testifying social worker in this case?

9 A: Me.

10 Q: And did you convey that to the team?

11 A: Yes.

12 MS. VANN: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. VANN:

15 A: And at one point, I had contacted Jan Vogelsang out of
16 Greenville, who has testified federally all over everywhere
17 in major, major cases, but I knew on such short notice she
18 probably wouldn't be able to do it. But I thought I'd give
19 it a shot, but she couldn't. She couldn't come.

20 Q: So this email that I handed you, could you take a look
21 at it and do you recognize it?

22 A: Yes.

23 Q: And what is -- what is this set of emails?

24 A: I'm saying to Bill Diggs -- this is copied to Gerald --
25 and telling him that I had spoken to Gerald the day before,

DALE DAVIS - DIRECT BY MS. VANN

1 discussed a couple of things. One was the need to get a
2 social worker so that we'd have an expert to testify about
3 his background, accomplishments, home life, et cetera. We
4 can have a couple of teachers and a friend or two, but the
5 social worker can talk to the people I've talked to and relay
6 all of that. I mentioned a social worker in an email a few
7 days ago as I thought you may already have someone lined up,
8 but after talking to Gerald, he wasn't aware of a social
9 worker on the case.

10 Q: And did -- does this indicate that you had previously
11 talked to them about hiring a social worker?

12 A: Yeah, because there -- really, from when this started to
13 a capital trial, that's not a lot of time on capital cases
14 here, usually a year, year and a half or more, but I had
15 mentioned that in meetings several times. I'm not sure when
16 I began mentioning it in emails.

17 MS. VANN: Your Honor, I would move to have this
18 admitted as Applicant's Exhibit 24.

19 THE COURT: Any objection?

20 MS. SCRANTOM: No, Your Honor.

21 THE COURT: So admitted.

22 (WHEREUPON, Plaintiff's Exhibit Number 24, email re:
23 social worker, was admitted into evidence.)

24 BY MS. VANN:

25 Q: You mentioned that you had contacted Jan Vogelsang about

DALE DAVIS - DIRECT BY MS. VANN

1 testifying as a social worker in this case. Why did -- and
2 you said -- I'm sorry if I missed why you said exactly why.
3 Why did you contact her in particular?

4 A: Because she's excellent. She's all of those bomber
5 trials, things in Washington DC. She's been the big -- she's
6 been the social worker on many, many things and she's
7 excellent, and I just knew we were going to need somebody
8 excellent on this case.

9 Q: And was she able to work on this case?

10 A: No. She was -- I didn't think she would be, like I
11 said, but --

12 Q: Did she say why she couldn't work on it?

13 A: She already had trials. She had things already
14 scheduled.

15 Q: And so the team went with Dr. Califf instead?

16 A: That's who Bill hired.

17 Q: Do you know when Bill hired Evelyn Califf?

18 A: I'm sure it's in my time schedule because we went up
19 there specifically to meet with her in part of our meeting
20 and she was so late showing up that the meeting was at least
21 two hours late. She was so late showing up that we were
22 breaking up and she was supposed to get back in touch with
23 me, but she never did.

24 Q: I'm handing you another email, if you could take a look.
25 And do you recognize this email?

DALE DAVIS - DIRECT BY MS. VANN

1 A: Yes. It's copied to me.

2 Q: And what is the email discussing?

3 A: It's from Gerald Kelly to Evelyn Califf. Califf? Is
4 that right?

5 Q: Yes. Califf.

6 A: Saying that we're looking to her to present the jury the
7 history of him -- of Stephen and the specific things that he
8 wanted them to ask. He's telling her that I would be
9 invaluable to her, that I've been on the case and collecting
10 information. Please work closely with me. You have little
11 time to prepare and need her help. And then he's saying he
12 would be in Georgetown on Monday and can meet with you.

13 Q: And when was that email sent?

14 A: July 21st, 2006.

15 Q: And the second email in this packet?

16 A: This one is July 25th, and it's from Gerald to Bill,
17 copied to us, with the subject line Dr. Califf. He's saying
18 what will be Dr. Califf's role in this trial? What are you
19 expecting her to do?

20 And he says what he's doing at that time about another
21 witness and saying that he'd encouraged her to get in touch
22 with me and work with me, but as of today he knows of no
23 progress with Dr. Califf, and I mentioned this to you because
24 Dr. Califf and client's history is in your column and
25 obligations.

DALE DAVIS - DIRECT BY MS. VANN

1 Q: And do you recall when the trial ended up starting in
2 this case?

3 A: It started very near the beginning of September because
4 we were moving into a new house at the time, and I know we
5 moved into that house the beginning of September of 2006.

6 Q: Is it possible it started in August?

7 A: It could have. I mean because of jury selection and
8 that, probably.

9 MS. VANN: Your Honor, at this time, I would move to
10 admit these as Applicant's Exhibit 25.

11 THE COURT: Any objection?

12 MS. SCRANTOM: No, Your Honor.

13 THE COURT: Without objection, admitted.

14 (WHEREUPON, Plaintiff's Exhibit Number 25, email re:
15 Evelyn Califf, was admitted into evidence.)

16 BY MS. VANN:

17 Q: Do you think that Evelyn Califf had enough time to
18 prepare for trial?

19 MS. SCRANTOM: Object, Your Honor. Call -- Your Honor,
20 calls for speculation.

21 THE COURT: Sustained.

22 MS. SCRANTOM: Thank you.

23 BY MS. VANN:

24 Q: In your experience, how long does it take to prepare --
25 to prepare a social worker to testify in a capital trial?

DALE DAVIS - DIRECT BY MS. VANN

1 MS. SCANTOM: Objection, Your Honor. Same objection.

2 THE COURT: Objection sustained.

3 BY MS. VANN:

4 Q: Did you have any concerns about Evelyn Califf's
5 qualifications to testify as a social worker in this case?

6 A: I did because she wasn't a social worker and I don't
7 think that she had ever worked in that capacity, and she
8 clearly, from the little bit of conversation I had with her,
9 didn't understand what -- what she was supposed to do or what
10 a social worker would do.

11 Q: Did you have any concerns about how she went about
12 preparing for the trial?

13 MS. SCANTOM: Objection. Speculation.

14 THE COURT: State your question again.

15 MS. VANN: I asked if she had any concerns about the way
16 in which Evelyn Califf went about preparing for trial.

17 THE COURT: I'll sustain that objection.

18 BY MS. VANN:

19 Q: Do you know how Evelyn Califf prepared for trial?

20 A: I don't think she did prepare because the only thing she
21 did was take information that they had provided her, work
22 that I had done, and used that information to testify as if
23 she were the one that had done the interviews. So I don't
24 think she -- if she prepared, she never got in touch with me
25 about it.

DALE DAVIS - DIRECT BY MS. VANN

1 Q: Now, is it your understanding that Mr. Stanko had a
2 second trial in Horry County?

3 A: Yes.

4 Q: Did you work on that case?

5 A: No.

6 Q: Why didn't you work on that case?

7 A: For the reasons that I was concerned about this one. I
8 just didn't think it was a viable defense and the team just
9 had not functioned as a team and it was -- I'm a little bit
10 obsessive myself about things and I just felt like, having
11 done this the right way before, I just was kind of upset with
12 the lack of communication and the defense that was used.

13 Q: And had Mr. Diggs asked you to be involved in this case?

14 A: Yes, he did.

15 Q: And you refused?

16 A: He did ask me, yes.

17 MS. VANN: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 MS. VANN: No further questions, Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. VANN: Thank you.

22 THE COURT: Cross-examination.

23 MS. SCRANTOM: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes.

DALE DAVIS - CROSS BY MS. SCRANTOM

CROSS-EXAMINATION

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BY MS. SCRANTOM:

Q: Ms. Davis, were you with Evelyn Califf working side-by-side with her when she prepared to testify in this trial?

A: I don't know that she prepared. That's what I was saying.

Q: But that's not my question, Ms. Davis. Were you with Ms. Califf, working side-by-side with her, when she prepared to testify for this trial?

A: I was never with Dr. Califf for anything. So --

Q: Did you prepare -- did you give Dr. Califf all of the information that you had pulled and worked on in this trial?

A: I believe Mr. Diggs gave her that.

Q: Did you get Mr. Diggs everything --

A: Yes.

Q: -- that you believed you needed to give him?

A: Yes.

Q: And you were hired in September of 2005?

A: I believe that's what the time sheet said.

Q: And in your experience as a mitigation investigator, is the field of mitigation investigation a one-case-fits-all approach?

A: No. That's why you sort of have team meetings for theory development once you've done some of the investigation.

DALE DAVIS - CROSS BY MS. SCRANTOM

1 Q: And so you went out and dug up a number of individual
2 facts about Mr. Stanko's past and reported those back to the
3 attorneys in this case; is that correct?

4 A: Facts or records.

5 Q: And you did that over a period of months; is that
6 correct?

7 A: Yes.

8 Q: And you testified at Mr. Stanko's trial twice about your
9 records collection in this case, didn't you?

10 A: Did I? I didn't remember that.

11 Q: Do you recall testifying during the penalty phase?

12 A: I -- I re -- I remember testifying, but I didn't realize
13 I had done it twice.

14 Q: And that would have been, based on your experience as a
15 mitigation investigator, testimony limited to your records
16 collection; is that correct?

17 A: I think so, other than the thing about him getting in
18 the back of the head with a bottle.

19 Q: What do you remember testifying about about that part?

20 A: Because it came up and the person hadn't been subpoenaed
21 that was with him. So they put me on the stand to talk about
22 the interview that I had had with him.

23 Q: So you did interview that person and you relayed to the
24 jury what the facts of the beer bottle incident were; is that
25 correct?

DALE DAVIS - CROSS BY MS. SCRANTOM

1 A: Yeah, what the guy told me.

2 Q: Okay. And as a mitigation investigator, is it true that
3 counsel in this case would not have shared all of the mental
4 health evaluations that they would've conducted?

5 A: No. Huh-uh.

6 Q: Ms. Davis, what exactly is the cohesive story of Mr.
7 Stanko's mitigation case that you would have presented at his
8 trial?

9 A: Well, it would be quite in-depth based on the records,
10 but I think I would -- you would begin with his childhood and
11 the situation. His father was in the military. We'd talk
12 about that. His father was kind of a stern person and that
13 when he would have qualified for college, his father wouldn't
14 allow tax returns to be used so that he could get financial
15 aid. We'd talk about how successful he was in high school.

16 Then about you're not sure if the brain injury could
17 have been at birth or the brain injury could have been from
18 licks. You're really not sure where the brain injury came
19 from, but it was certainly there and it affected his
20 behavior, one being that the first incident with the
21 girlfriend and the way she described it even at trial was
22 very similar to the situation that happened in Georgetown
23 County.

24 To me, it seemed I just couldn't get my head around it.
25 He left and went to Augusta, knowing that his face was all

DALE DAVIS - CROSS BY MS. SCRANTOM

1 over the news, in a stolen truck, and made no attempt
2 whatever to hide. Instead of taking off for Canada or Mexico
3 or somewhere, he just went to Augusta and was just like he
4 just moved there and was taking up residence.

5 I mean none of those things signify to me a brain that's
6 functioning properly. And so you can -- you can frame things
7 in a way. You're never going to get away from those. I
8 don't think we would've ever used the psychopath, but he
9 certainly had the antisocial personality disorder. I mean
10 you acknowledge those things, but you can -- you know, you
11 can frame things different ways and make -- make somebody
12 know about him, about his whole life, instead of just all
13 these separate things.

14 Q: And from your meetings with the defense team, is it fair
15 to say that the theory of the defense was to look for an
16 answer to that behavior from Mr. Stanko?

17 A: I think they -- I think they found the answer. I mean
18 the answer was that he certainly had brain damage, but you
19 just -- just to me, you couldn't present it the way it was
20 presented and expect any result other than what we got.

21 Q: Ms. Davis, I have to ask. Do you have a law degree?

22 A: I do not.

23 Q: You were hired as a mitigation investigator; correct?

24 A: That's right.

25 Q: And part of your role, you went back and you uncovered

DALE DAVIS - CROSS BY MS. SCRANTOM

1 Mr. Stanko's birth records; correct?

2 A: Uh-huh. Yes.

3 Q: All the way from Cuba?

4 A: Yes.

5 Q: Can --

6 A: Well, it was through somebody. I mean through the
7 military.

8 Q: And you also got Mr. Stanko's mother's records from that
9 period and her medical history; is that correct?

10 A: Yes. And his mother didn't remember him being sick at
11 all. She didn't remember any of that.

12 Q: And you gave those records to Mr. Diggs --

13 A: Yes.

14 Q: -- and Mr. Kelly?

15 A: Yes.

16 Q: And you conducted a number of interviews with people
17 from the neighborhood where Mr. Stanko grew up; is that
18 correct?

19 A: Yeah. One -- one lady in particular I remember who
20 still had pictures of him playing ball and things like that.
21 She actually seemed more interested in him than his family
22 did to me.

23 Q: Did you recall if she testified at trial?

24 A: Uh-huh. Yes.

25 THE COURT: Is that a yes?

DALE DAVIS - CROSS BY MS. SCRANTOM

1 THE WITNESS: Yes. Sorry.

2 BY MS. SCRANTOM:

3 Q: You also looked into records of the death of one of Mr.
4 Stanko's brothers; is that correct?

5 A: I did.

6 Q: And did you travel to Manning to dig up what you could
7 find on that?

8 A: Yes. I was trying to find a death certificate, but
9 strangely -- I mean you would think it would've been Newberry
10 or MUSC, but it just wasn't anywhere. I went to a funeral
11 home up there.

12 Q: But you also went to governmental entities from
13 Clarendon County and retrieved records about that; is that
14 correct?

15 A: I don't -- did I? Maybe I found a police report. I'm
16 not sure. I just remember it was a fire and his brother died
17 in a fire and that I could never find a death certificate.
18 So --

19 Q: And you would have logged that as part of your time
20 spent on this case; correct?

21 A: Yes.

22 Q: And would you have given those records to counsel?

23 A: If I had any. I don't recall finding any records, but
24 if you -- if you say I did, I did, but I don't recall finding
25 any records.

DALE DAVIS - CROSS BY MS. SCRANTOM

1 Q: Did you get in touch with Mr. Stanko's relatives?

2 A: His -- his sister, his brother, and his mother, and one
3 time his father.

4 Q: Do you recall how many siblings Mr. Stanko has?

5 A: Yeah. He had two sisters living and a brother and then
6 the brother that was deceased.

7 Q: Did you dig up his yearbooks and school records?

8 A: Yes. Well, I think he had them. I got -- I think I got
9 them from his -- from his stuff.

10 Q: Would you have turned those over to counsel as well?

11 A: Yeah. I think I scanned a lot of that stuff and sent
12 that -- sent it to them, and I know that was part of a
13 PowerPoint presentation, some of the -- some of the pictures
14 from the yearbook.

15 Q: Who would have presented that PowerPoint presentation?

16 A: I'm not sure. I guess Mr. Diggs or Mr. Kelly, one or
17 the other.

18 Q: But you didn't testify about the PowerPoint presentation
19 personally?

20 A: No.

21 Q: Did you?

22 A: Huh-uh.

23 Q: Would that have been Dr. Califf?

24 A: But I didn't -- I did make it, but I didn't testify
25 about it.

DALE DAVIS - CROSS BY MS. SCRANTOM

1 Q: Okay. You conducted interviews with classmates and
2 teachers and the principal at Mr. Stanko's high school;
3 correct?

4 A: Yes.

5 Q: And did you transcribe those interviews and provide
6 those to counsel?

7 A: Yes.

8 MS. SCRANTOM: I beg the Court's indulgence, Your Honor.

9 BY MS. SCRANTOM:

10 Q: Ms. Davis, did you ask the family to attend the trial?

11 A: I did, but only as a formality because I knew they
12 wouldn't. His sister from California would have come, but I
13 think she -- I'm not sure she didn't have so many issues
14 herself. She said she was coming, but in the end, she
15 didn't.

16 Q: Okay. Were you here in 2015 to testify in the first PCR
17 action in this case?

18 A: Probably.

19 Q: Do you recall at that time seeing or hearing testimony
20 from Mr. Stanko's family?

21 A: No.

22 Q: Okay.

23 A: I didn't know they -- they were here. Are you asking me
24 if I knew they testified here?

25 Q: If they did?

DALE DAVIS - CROSS BY MS. SCRANTOM

1 A: Oh. Not to my knowledge.

2 Q: Okay.

3 A: But I don't know anything other than myself. I mean I
4 don't know anything about who testified; so I can't say.

5 Q: Do you have a copy of Plaintiff's Exhibit 22 in front of
6 you?

7 A: I'm sorry. These aren't marked what numbers they are.
8 If you could tell me what the date?

9 Q: It is an email that was sent on December 19th of 2006,
10 which was after Mr. Stanko's trial.

11 A: Okay. I've got it.

12 Q: Now, you underlined a sentence taken from that -- from
13 your summary of that article; is that correct?

14 A: Well, that's a paragraph that I took directly out of the
15 article. I just put it up there because it had that sentence
16 that I wanted to underline.

17 Q: Could you read for the Court what the two sentences
18 before the underlined portion say, please?

19 A: These findings have not only sparked debate among
20 researchers but also attracted widespread interest among
21 lawyers and judges. Of course, the United States and other
22 countries increasingly rely on psychopathy measures to make
23 sentencing judgments.

24 Q: Thank you.

25 MS. SCRANTOM: I beg the Court's indulgence for one more

DALE DAVIS - CROSS BY MS. SCRANTOM

1 moment.

2 THE COURT: Yes.

3 BY MS. SCRANTOM:

4 Q: Ms. Davis, do you recall why Mr. Stanko's living brother
5 would not have attended the trial of this case?

6 A: I think he just didn't want anything to do with it. I
7 mean I met -- I went -- I was in Atlanta for a mental health
8 conference and met him there, but I just think he didn't want
9 anything more to do with Stephen.

10 Q: Was he invited to come and testify?

11 A: I can't say that for sure, but I believe I did and he
12 declined.

13 Q: Okay.

14 MS. SCRANTOM: Thank you. No further questions.

15 THE COURT: Any redirect?

16 MS. VANN: Very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. VANN:

19 Q: To your knowledge, did any of the attorneys have any
20 contact with the family members asking them to come testify
21 at trial?

22 A: No. They did not.

23 Q: You were responsible for contacting the family?

24 A: I did. I did do that, yes. I was trying to arrange --
25 make travel arrangements for his sister, but like I said, she

DALE DAVIS - REDIRECT BY MS. VANN

1 just kept coming up with one excuse after another one not to
2 come.

3 Q: And Mr. Diggs or Mr. Kelly get involved in that
4 discussion with the sister?

5 A: No.

6 MS. VANN: Court's indulgence.

7 Nothing further, Your Honor.

8 THE COURT: Ms. Scrantom?

9 MS. SCRANTOM: Nothing from the State.

10 THE COURT: Ma'am, you may step down. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Can the lawyers approach while she's
13 stepping down?

14 MS. VANN: Ms. Davis is also under subpoena. Can we
15 release her?

16 THE COURT: Any objection to her being excused?

17 MS. SCRANTOM: No.

18 THE COURT: Ms. Davis, you are excused from your
19 subpoena. You have no further responsibility here.

20 THE WITNESS: Thank you so much. Just in time to get
21 tied up in Charleston traffic, I think.

22 THE COURT: Yes.

23 (WHEREUPON, a bench conference was held as follows.)

24 THE COURT: Y'all have got two more witnesses?

25 MR. ANDERSON: I probably will have one in the morning,

1 Your Honor. I don't have one for today right now.

2 THE COURT: This is it for today?

3 MR. ANDERSON: Yes.

4 THE COURT: Okay. Because y'all had a couple more, Mr.
5 Waite and Mr. Windley.

6 MR. VANN: Yes.

7 MR. ANDERSON: And Mr. Waite had his days confused.

8 THE COURT: All right. I was curious because there were
9 two more on the list. I was curious how long they were going
10 to be, but y'all don't have any more though?

11 MS. VANN: I don't have any.

12 THE COURT: What's this memo you have on here?

13 MS. VANN: It's a bench memo I was going to give you.
14 Our understanding is that the State is planning to call
15 initial PCR counsel, at least one of the attorneys.

16 THE COURT: Shaffer.

17 MS. VANN: Yes.

18 THE COURT: Right.

19 MS. VANN: That's our understanding.

20 THE COURT: Uh-huh.

21 MS. VANN: And we object to his testimony as irrelevant
22 and, if he's testifying about prejudice, we believe that's
23 improper testimony.

24 MR. ZELENKA: That's the whole issue.

25 THE COURT: I'm going to --

1 MR. ZELENKA: That PCR counsel was ineffective.
2 THE COURT: I know. We'll talk about that later.
3 MS. VANN: Okay.
4 THE COURT: But I am going to let him testify, just like
5 I -- even if I withheld or sustained their objection on some
6 of this, you still -- you still have a right to proffer the
7 testimony. So I'm going to let him testify. I mean I
8 understand your objection.
9 MS. VANN: All right.
10 THE COURT: So anything else for today?
11 MS. VANN: No.
12 THE COURT: 9:30 in the morning?
13 MS. VANN: Uh-huh.
14 THE COURT: All right.
15 (WHEREUPON, the bench conference ended and the
16 proceedings resumed as follows.)
17 THE COURT: Do you want to give that to me today anyway
18 though?
19 MS. VANN: Sure.
20 THE COURT: All right. That will conclude our testimony
21 for today. We will resume tomorrow morning at 9:30 --
22 tomorrow morning at 9:30.
23 You can approach.
24 MS. VANN: I'm going to attach this Robertson and Green
25 v. State, which are the two cases we relied on.

1 THE COURT: Okay. Is Mr. -- Mr. Stanko being housed in
2 Georgetown County now overnight? Okay. I didn't know if
3 they were taking him back to whatever state facility he was.
4 So it shouldn't be an issue of getting him here tomorrow
5 morning at 9:30.

6 Okay. Tomorrow morning at 9:30. Thank you, all.

7 MS. VANN: Thank you.

8 MS. SCRANTOM: Thank you, Your Honor.

9 THE COURT: Can the lawyers approach just for a minute,
10 please?

11 (WHEREUPON, a bench conference was held as follows.)

12 THE COURT: Please tell me your name.

13 MR. ZELENKA: Don Zelenka.

14 THE COURT: Okay.

15 MR. ZELENKA: I'm the deaf guy who can't hear. That's
16 why I keep looking at her to try to make it out.

17 THE COURT: All right. You know, I've thought about
18 this thing, as I'm sure you have all weekend. Okay? And
19 exactly the process of this whole hearing.

20 You know, the Supreme Court kicked it back to me for a
21 prejudice hearing at this point. So I mean, in essence, is
22 this is a double PCR is what it amounts to. Instead of
23 determining whether or not Axelrod and Shaffer -- their
24 represent -- Stanko was prejudiced by such and, if so, then
25 based upon everything y'all are putting up are putting up to

1 show trial counsel was ineffective. Does that make sense?

2 MS. VANN: Uh-huh.

3 THE COURT: Okay. So I think that -- and I'll look at
4 your memo tonight, but again, I'm going to listen to what
5 Shaffer has got to say because I think it goes to the heart
6 of the issue here and I think they have a right to say why
7 they did what they did, just like trial counsel gets a right
8 to come in here and say they did what they did.

9 Because I've got to determine whether or not it's a
10 legitimate strategy, so to speak, in how they --

11 MS. VANN: Right. Well, our argument is that that has
12 already been determined by your finding that they were not
13 qualified, and that goes to the performance prong.

14 THE COURT: Right. I understand that, but if that were
15 the case, I think the Supreme Court would have said if you
16 find him not qualified, then that's an automatic prejudice,
17 prejudice per se automatic, and it gets him another bite at
18 the apple. He's getting another bite of the apple, so to
19 speak. Okay?

20 Anyway, I just wanted to make sure.

21 MS. VANN: Thank you.

22 MS. SCRANTOM: Thank you.

23 THE COURT: All right.

24 (WHEREUPON, the proceedings adjourned for the day at
25 4:36 p.m.)

State of South Carolina) Court of Common Pleas
) 15th Judicial Circuit
County of Georgetown) Case No. 2008-CP-22-01446
)
)
Stephen C. Stanko #6022,)
)
) Plaintiff/Applicant,)
)
-vs-) Transcript of Record
) **VOLUME II - Day 2 of 2**
)
State of South Carolina,)
)
) Defendant.)
)

January 28-29, 2019
Georgetown, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Lindsey S. Vann, Esquire
Henry Anderson, Jr., Esquire
Attorney for the Plaintiff/Applicant

Caroline M. Scrantom, Esquire
Donald J. Zelenka, Esquire
Attorneys for the State

Krystal J. Smith
Circuit Court Reporter

JEFF STANKO - DIRECT BY MS. VANN

JANUARY 29, 2019

(WHEREUPON, the proceedings resumed at 9:31 a.m.)

THE COURT: Is the State ready to proceed?

MS. SCRANTOM: Yes, Your Honor.

THE COURT: Ms. Vann, are you all ready to proceed?

MS. VANN: Yes, Your Honor.

THE COURT: You may call your first witness, please.

MS. VANN: The applicant calls Mr. Jeff Stanko.

THE BAILIFF: Place your left hand on the Bible and raise your right hand and face the young lady.

THE CLERK: Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Please be seated and then state and spell your full name for the record.

THE WITNESS: Jeffrey Todd Stanko, J-e-f-f-r-e-y T-o-d-d S-t-a-n-k-o.

JEFF STANKO, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. VANN:

Q: Good morning, Mr. Stanko. Thank you for being here this morning.

A: Good morning.

JEFF STANKO - DIRECT BY MS. VANN

1 Q: Could you tell the Court how you know Stephen Stanko?

2 A: He's my brother.

3 Q: Is he your older or younger brother?

4 A: Youngest brother.

5 Q: And where do you currently live?

6 A: Atlanta, Georgia.

7 Q: Could you tell the Court a little bit about your work
8 history?

9 A: After high school, I joined the Army. My career field
10 was military police. I did that for 22 years. I retired. I
11 worked for the Veterans Affairs and I assist the veterans who
12 are trying to assimilate into a hospital.

13 Q: I'd like to go over some of your family information.
14 Could you describe the makeup of your immediate family?

15 A: I'm the -- well, I have an older sister, Peggy, and an
16 older sister, Cindy. I had an older brother, Billy. There
17 was seven years between Billy and myself, and then Stephen
18 was after me about 18 months later.

19 Q: And did you grow up living with both of your parents?

20 A: Yes.

21 Q: Could you tell the Court a little bit about your mom and
22 dad?

23 A: My mother was the compassionate one. She would console
24 us if need be. She stayed at home. She raised the kids at
25 the house while my dad was in the Navy or, prior to that, he

JEFF STANKO - DIRECT BY MS. VANN

1 worked in the coal mines in Pittsburgh. So he was raised
2 kind of old school where he would be the breadwinner and my
3 mom would be at home raising the children.

4 Q: What did your father do in the military?

5 A: Initially, he worked on radars on destroyer ships.

6 Later in his career, he was an instructor for that career
7 field and then right before his retirement, he was the senior
8 enlisted person for the training center.

9 Q: Because of your father's military work, did your family
10 move around a lot?

11 A: Probably every four years.

12 Q: Can you tell us where you lived during your lifetime and
13 during Stephen's lifetime?

14 A: I was born in Pittsburgh and my father went back into
15 the service after a 10-year break. He was assigned to Cuba.
16 So they had to wait two weeks after my birth for inoculations
17 before we could fly my mom and the four older siblings -- or
18 three other siblings to Cuba. While in Cuba, Stephen was
19 born. From Cuba, we went to Mayport, Florida. Then we went
20 to Corpus Christi, Texas, Chicago, and then to Charleston,
21 and Charleston is where my father retired from.

22 Q: When did you move to Charleston?

23 A: I was in the fourth grade.

24 Q: And did you remain there throughout the rest of your
25 schooling?

JEFF STANKO - DIRECT BY MS. VANN

1 A: Yes.

2 Q: Through high school?

3 A: Yes, I did.

4 Q: You may have said this. How much older than Stephen are

5 you?

6 A: About 18 months.

7 Q: Can you tell the -- us a little bit about what your

8 relationship was like with Stephen growing up?

9 A: Typical brothers of the same age. Lived in bunkbeds in

10 the same room probably well into our teens. Because of our

11 age closeness, every other year we played on the same

12 baseball team. Relatively what I would call a normal

13 childhood.

14 Q: What position did Stephen play in baseball?

15 A: Stephen was a catcher.

16 Q: Do you know if he ever got hit by a ball or a player

17 playing baseball as a catcher?

18 A: Several times I'm sure as a pitch would occur or if a

19 runner was coming from third to home, there was a collision

20 that occurred with him as a catcher.

21 Q: Did he ever have to leave a game because of being hit?

22 A: Probably. I would say two times that I would recall.

23 Q: How did Stephen get along with your other siblings?

24 A: I would say well.

25 Q: What was his relationship like with Peggy, your oldest

1 sister?

2 A: They got along. Well, when we were younger, Peggy would
3 act like she was my mom and Cindy would act like she was
4 Stephen's mom, and they would role-play us as being the moms
5 and we would be the kids.

6 Q: How much older than you is Peggy?

7 A: Eleven years.

8 Q: And would that make Cindy nine years older than you?

9 A: Correct.

10 Q: How old were you when Peggy moved out of the family
11 home?

12 A: I was going into the fourth grade.

13 Q: What happened that Peggy decided to move out?

14 A: We were in Chicago and my father was on orders to go to
15 Charleston. In between that move, we went home to Pittsburgh
16 for Christmas. Peggy had already completed high school and
17 was working in Chicago, and she had met her current husband.
18 He came to Chicago and -- I'm sorry -- Pittsburgh from
19 Chicago and he was intending to just spend time with her
20 before they -- well, we moved completely to Charleston, but
21 at that time, he proposed to her and she accepted and they
22 were going to -- Peggy was not going to come to Charleston.
23 She was going to return to Chicago with her husband.

24 Q: How did your parents feel about that decision?

25 A: My father was not happy with the decision because of the

JEFF STANKO - DIRECT BY MS. VANN

1 age difference between Peggy and her husband.

2 Q: Could you talk a little bit about your brother, Billy?

3 A: Billy was the -- the oldest son. He was very athletic.

4 He was playing for the high school team in Goose Creek. He

5 actually had scholarships when he was a sophomore when we

6 lived in Chicago. And when we moved, some of those went away

7 due to a knee injury that he had when he was a senior. He

8 left high school, was in construction. He left the house and

9 was living on his own. I don't think anything was going

10 wrong at the time.

11 Whenever we were on vacation, I believe we were in

12 Chicago for the birth of Peggy's first child, we got notified

13 that Billy was in a motorcycle accident on Rivers Avenue in

14 Charleston. And after that, after he recovered, he had to

15 move back into the house during his recovery because he had

16 broken his arm and his hip.

17 And somehow, he was -- received funding to go to Trident

18 Technical College. He received an accounting degree and,

19 once he was able to move out the house, he moved out the

20 house and he was working with another graduate of his same

21 class as accountants somewhere in Charleston.

22 Q: Did Billy have any trouble after he recovered from his
23 accident?

24 A: I -- I believe that he was addicted to the painkillers

25 that he was prescribed based on his injuries for his hip and

1 his forearm.

2 Q: Did -- did Billy die?

3 A: Billy was murdered. He didn't die. He was murdered.

4 It's still an unsolved crime in Santee, South Carolina.

5 Q: Can you describe what you know about what happened?

6 A: When I was in my junior year of high school, the

7 detective came knocking on the door. I answered the door.

8 He asked to speak to my parents, and he told us that Billy

9 had died in a suspected arson. That they had not performed

10 an autopsy.

11 Several weeks later, the autopsy was completed, and

12 Billy did not die from the fire because there was no smoke in

13 his lungs. He had two gunshot wounds in his body.

14 Q: How did Billy's death affect you?

15 A: I mean it was difficult because based on the fire and

16 his body, we had to have a closed casket. So I didn't

17 necessarily get that closure for him. It was a closed

18 casket; so it was difficult to -- I would see someone who had

19 a similar body to my brother and, if I was walking through

20 the mall, I would walk really quick to catch up to him to try

21 to see if it was him because sometimes I just didn't believe

22 that it had occurred.

23 Q: How did your parents talk to you about what happened to

24 Billy?

25 A: Initially, it was open discussion, but whenever the

JEFF STANKO - DIRECT BY MS. VANN

1 discussion led to possibilities of why he was shot, it became
2 more of a closed discussion between my mother and my father.

3 Q: I want to switch gears a little bit and talk about
4 Stephen while he was in school. How was he as a student?

5 A: He was popular in school, an extrovert. He could talk
6 to anyone. Excelled at his schoolwork with, to me, little
7 effort. He played sports, same as me, all through high
8 school.

9 Q: Did he get into any trouble during high school?

10 A: I don't remember any trouble that he was in.

11 Q: Do you recall how old Stephen was when you left the
12 home?

13 A: He was probably 17.

14 Q: And did you go straight into the Army after high school?

15 A: I graduated in June and I was doing contract work as a
16 sandblaster at a chemical plant in Charleston until I joined
17 the Army in September.

18 Q: After you left, was it just Stephen living at the home
19 with your parents?

20 A: Yes.

21 Q: Did there come a time when you had a falling out with
22 your father?

23 A: When I was in the military, I had a girlfriend and I
24 actually got married, and she was African-American and my dad
25 did not appreciate that.

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- 1 Q: Did anyone come to your wedding?
- 2 A: My oldest sister, Peggy, was at the wedding.
- 3 Q: But your parents did not come?
- 4 A: No.
- 5 Q: How old were you when you got married?
- 6 A: About 19.
- 7 Q: How much contact did you have with Stephen after he
- 8 finished -- well, after you finished high school and moved
- 9 away?
- 10 A: Probably every two months or so, I would get some time
- 11 away from my duties and I would be allowed to come back to
- 12 Goose Creek. So I would see him when I visited.
- 13 Q: Did Stephen graduate from high school?
- 14 A: Yes.
- 15 Q: Do you know what his plans were after he graduated?
- 16 A: He was trying to go to the Air Force Academy.
- 17 Q: Did he end up going to the Air Force Academy?
- 18 A: He did not.
- 19 Q: Do you know if he applied for any other schools?
- 20 A: I did not know other than the Air Force Academy.
- 21 Q: Did he end up going to college?
- 22 A: No.
- 23 Q: What did he do instead?
- 24 A: He started working at Circuit City on Rivers Avenue.
- 25 Initially, he was a salesperson, but he excelled and they

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1 moved him up to being in charge of a specific area within the
2 store for selling that particular item.

3 Q: Did he have any other sales jobs after high school?

4 A: I -- I know of him selling chemicals. That's all I
5 recall at this time.

6 Q: Did you notice any changes in Stephen when you would see
7 him when you were coming home from the military?

8 A: Yes. You know, later on, after high school, it appeared
9 that he would brag on himself or what or whom he knew more so
10 or what -- who he knew and what they could do for you if you
11 needed something.

12 Q: Did he start getting into any trouble?

13 A: Yes. At one time, he was advising people that he could
14 do services for them. I know that there was a good friend of
15 ours from high school's father that he promised to help him
16 with his computer, and it never came to what he had promised.

17 Q: How did your parents respond to the things that Stephen
18 was doing?

19 A: I mean my parents assisted Stephen several times moving
20 from one city to another. I think it was four positions.
21 I'm not sure why he was changing positions. I know they
22 helped, I believe, from Augusta and to Savannah.

23 Q: Did anyone in your family encourage him to seek any
24 mental health treatment?

25 A: I'm not aware of any mental health treatment.

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1 Q: Did Stephen eventually end up going to prison for the
2 things that he was doing?

3 A: Yes.

4 Q: Do you know how long he was in prison?

5 A: In between nine and ten years.

6 Q: How much contact did you have with him during that
7 incarceration?

8 A: I would visit him. I would take my sister, Peggy, to
9 visit him when she flew in from California. I know we
10 visited in Berkeley County, Turbeville, also in Columbia.

11 Q: How did he seem to be doing while he was in prison?

12 A: Based on his demeanor while we were visiting him, he
13 seemed well. He told us that he was helping some of the
14 other inmates with GED classes and things such as that.

15 Q: Did you know when Stephen was going to be released?

16 A: I was not aware of the specific time, no.

17 Q: When did you find out that he was released?

18 A: Stephen called me and told me that he was released and
19 in Myrtle Beach.

20 Q: Do you know when that was?

21 A: I don't know the specific time, no.

22 Q: Does 2004 sound accurate?

23 A: Yes. I was going to say between '03 and '05, yes.

24 Q: Did you go visit him when he was in Myrtle Beach?

25 A: Yes. Shortly after he told me where he was, I went to

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1 the hotel that he was staying at and visited him at the
2 hotel.

3 Q: Can you describe the room where he was staying?

4 A: Just a normal one bedroom, very neat, orderly. He had a
5 bunch of boxes in the room that were all side-by-side, neatly
6 organized. They were lettered, numbered. He told me that
7 they were either of his research for his writings or of his
8 court case.

9 Q: Do you know why he didn't move back to Goose Creek with
10 your parents?

11 A: I don't think my father was open to him moving back to
12 the house.

13 Q: Where were you living at the time?

14 A: In Fayetteville, North Carolina.

15 Q: So you traveled from Fayetteville to Myrtle Beach to
16 visit him?

17 A: Yes.

18 Q: Do you know what Stephen's plans were for after his
19 release to support himself?

20 A: I don't know if he had any specific plans. I know he
21 wanted to continue to write with the professors, but he
22 discussed that he had made several applications to different
23 locations in the Myrtle Beach area.

24 Q: How did his job search go?

25 A: It was not going well. He was very upset about the fact

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1 that he had to list on the paperwork for application that he
2 had a kidnapping charge and that also he had a sex offender
3 registration.

4 Q: Do you know if the sex offender registration was simply
5 because of the kidnapping charge?

6 A: That is my understanding it's because of the kidnapping.

7 Q: And did he do anything to try and remedy having to be on
8 the registry?

9 A: I believe while he was in -- incarcerated that he was
10 trying to get that rectified.

11 Q: After his release, was he on any sort of supervision?

12 A: He was having to report to a probation officer.

13 Q: Was that causing him any trouble?

14 A: It was difficult because he was required to pay the
15 probation officer to do the paperwork and to supervise him
16 while he was out.

17 Q: At some point, did Stephen ask to come live with you?

18 A: Yes. We had a phone conversation and he discussed if he
19 could live with me to try to make it easier on him and for
20 his transition.

21 Q: And what was your response?

22 A: I told him that I would have to discuss that with my
23 wife and that he needed to do any research to find out how to
24 apply to come to North Carolina and that he would need to
25 have a plan to actively pursue a job whenever he came.

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1 Q: Did you and your wife have that conversation?

2 A: Yes. We had the conversation and she agreed that it was
3 no problem for him to come and live with us. We were by
4 ourselves at a house; so there was no difficulties.

5 Q: Did Stephen ever -- was he ever able to come live with
6 you?

7 A: That never came to pass, no.

8 Q: Did you ever interact with Ms. Laura Ling?

9 A: Yes. I visited Steven and Laura and the initial time
10 was going to dinner with them with my wife, and then a second
11 time was visiting at the residence of Laura.

12 Q: Did there come a time when -- excuse me -- when Ms. Ling
13 contacted you about Stephen contemplating suicide?

14 A: Yes. She called and was in contact with myself and my
15 sister, Peggy, and said that Stephen was having a difficult
16 time and that he had contemplated hurting himself.

17 Q: And did you and Ms. Ling and Peggy do -- discuss how to
18 help him?

19 A: Yes. I discussed with her that we had discussed Stephen
20 coming to North Carolina. I think that stopped whenever he
21 met Laura and they moved in together. We also, you know,
22 discussed -- I personally discussed with her that she was a
23 single mother and that she needed to take her children's
24 welfare into consideration over Stephen's.

25 Q: Did you visit Stephen after this happened?

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1 A: I believe we visited one other time after that.

2 Q: At some point, did Ms. Ling contact you about Stephen
3 doing work at the library that concerned her?

4 A: That was another phone call that Laura made to me, and
5 the discussion was that some of the patrons of the library
6 were discussing where Stephen was doing services for them and
7 that what he was discussing with them to perform wasn't
8 really taking place.

9 Q: Did she have any concerns about that affecting her job?

10 A: Yes. She was worried that her supervisors would be
11 involved in it. She could possibly lose her income. That
12 was all she had for her children.

13 Q: What was your reaction when you heard about the crimes
14 that Stephen committed in April of 2005?

15 A: I was shocked. I didn't think that he could perform
16 that act.

17 Q: Had you ever seen him be violent in the past?

18 A: There was no violence during our childhood that I can
19 recall whatsoever.

20 Q: How did the crime affect your family, especially in the
21 period of time when he was -- before he was arrested?

22 A: The most difficult part was the media and their
23 treatment of my parents, parking their vans in the street in
24 my parents' yard, harassing them. You have two people who
25 are in their late 60s and have no influence over the actions

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1 of their child, and they're the ones being persecuted more
2 than the person that did the act.

3 Q: Did law enforcement come to any of your family's homes?

4 A: The local police department and a US marshal came to my
5 residence in Fayetteville. They hid behind bushes and trees,
6 walking their way up to my front door. I had already seen
7 them. I had a cul -- I live on a cul-de-sac; so my front
8 window was viewing the cul-de-sac. So I saw three cars drive
9 up and I met them at the door.

10 The US marshal told me that they were looking for
11 Stephen, that they needed to know if he was at my residence.
12 I told them no. I said I'm law enforcement. If he came to
13 my house, I would be the first one to handcuff him, and they
14 still wanted to search my residence, specifically my garage
15 looking for Laura's car.

16 Q: In the period of time between his arrest and the trial,
17 how much communication did you have with Stephen's attorneys?

18 A: I had no -- no contact with the attorneys.

19 Q: Did anyone from Stephen's team contact you?

20 A: The only person that I spoke to was Ms. Dale Davis.

21 Q: Did you ever have any contact with any of the doctors
22 who evaluated Stephen?

23 A: I did not.

24 Q: Would you have been willing to?

25 A: Yes.

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1 Q: If the attorneys had talked to you before trial and
2 asked you to testify, would you?

3 A: Yes.

4 Q: And if you had testified at Stephen's trial, would your
5 testimony have been similar to what you've testified to here
6 today?

7 Q: Yes, ma'am?

8 MS. VANN: Court's indulgence.

9 THE COURT: Yes, ma'am.

10 MS. VANN: I have no further questions. Thank you, Mr.
11 Stanko.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Cross-examination.

14 MR. ZELENKA: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ZELENKA:

17 Q: Mr. Stanko, let's -- let's go back to your childhood
18 with Stephen. What was your relationship with him as you
19 were growing up? Did you have fights with him?

20 A: Steven and I would -- when we moved off the military
21 base to the local community in Goose Creek, the local kids --
22 we tried to hang out with them and stuff. There was this one
23 group that were always hanging out together and they were
24 picking on one of us.

25 So when it comes to fights, it was not between Stephen

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1 and I. It was with other people. If I was in a fight,

2 Stephen was there. If Stephen was in a fight, I was there.

3 Neither one of us were fighting without the other.

4 Q: As you were growing up, as a brother to brother

5 situation, did you have fights with Steven and Stephen blame

6 you for starting the fights? Did that ever occur?

7 A: There could have been a situation where, you know, we

8 had an argument and Stephen would raise his voice and my mom

9 would come in and see what was going on.

10 Q: Okay. When that occurred, who disciplined you?

11 A: It depends on what parent was available and responded to

12 the situation. So there was -- it depended on who responded.

13 Q: Okay. In your relationship growing up, was your father

14 usually the disciplinarian?

15 A: If my father was at home. If he was out to sea, then it

16 had to be my mother.

17 Q: Okay. How did he discipline you and Stephen?

18 A: Both of my parents used restriction or a paddling

19 equally.

20 Q: Okay. Did they strike you frequently or how was that?

21 A: Infrequently.

22 Q: Pardon me?

23 A: Infrequently. Not frequent at all.

24 Q: Okay. Some people have described your father as being

25 very strict. Did you consider that to be abnormal as you

JEFF STANKO - CROSS BY MR. ZELENKA

1 were growing up compared to your friends' parents?

2 A: I don't consider anything abnormal about my growing up
3 with my father. I don't consider my father strict. My
4 father gave guidance and I would not consider it strict. I
5 did not like that terminology being used whenever it was
6 described.

7 Q: Okay. And I believe you described your mother as being
8 compassionate when you began your testimony; is that correct?

9 A: Correct, sir.

10 Q: Was your relationship with your mother similar to
11 Stephen's relationship with your mother?

12 A: I would assume that it was.

13 Q: Okay. Now, at some point in time while you were in high
14 school, you played sports together; correct?

15 A: Yes, sir.

16 Q: What was Stephen's relationship with the other students
17 at the high school?

18 A: I thought it was great. He had his own group of
19 friends. I had my own group of friends. We had a couple of
20 similar friends that were in the -- the specific street that
21 we lived on.

22 Q: Okay. Did he have any reputation at that time for being
23 a braggart or lying about things?

24 A: I do not recall that reputation.

25 Q: Okay. Did you ever hear anybody talk about Stephen

JEFF STANKO - CROSS BY MR. ZELENKA

1 lying while he was in high school or being a braggart?

2 A: No, sir.

3 Q: Okay. Now, there was a situation where, as you
4 described, he had an interest in going to the United States
5 Air Force Academy; correct?

6 A: Yes, sir.

7 Q: Describe what you know Stephen did about going to the
8 Academy?

9 A: He completed the application for the Academy.

10 Q: Okay.

11 A: He did all the paperwork that was required.

12 Q: Do you know if he ever sent it in?

13 A: I'm not sure, sir.

14 Q: Okay. Now, as I understand it, your family was not a
15 wealthy family; is that correct?

16 A: I would say low to middle income.

17 Q: Okay. And did your parents indicate that the children
18 would probably either have to go into the military or go to
19 an academy and whether your parents would actually pay for
20 university? What discussions did they have with you and
21 Stephen about that, if you know?

22 A: My specific conversation with my father was that he
23 could not afford to send me to college and that I should, you
24 know, seek a career or have a career and pay for college at
25 the same time.

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1 Q: Okay. Now, Stephen was a very good student in school;
2 correct?

3 A: Yes, sir.

4 Q: He finished near the top of his class; correct?

5 A: Yes, sir.

6 Q: Did that give you concern why Stephen, although he
7 didn't get to the United States Air Force Academy, that he
8 didn't apply for colleges?

9 A: You're asking me did I have a concern?

10 Q: Were you confused?

11 A: I was not confused, sir.

12 Q: Okay. Did Stephen ever indicate to you that he wanted
13 to go to college?

14 A: I think Stephen's desire was to fly an airplane.

15 Q: Okay.

16 A: To fly, and that is why he was going the Air Force
17 direction.

18 Q: Okay. Independent of the Academy, you applied to the
19 Army; correct?

20 A: Yes, sir.

21 Q: And you wanted to be in law enforcement, which is one of
22 the reasons you applied to the Army; is that correct?

23 A: Yes. When my brother was murdered, it directed me
24 towards that direction of law enforcement so that -- my goal
25 was to come back and be a sheriff so I could go find the

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1 killer of my older brother, yes.

2 Q: Okay. Now, you've indicated that Stephen wanted to fly
3 in the military. Did Stephen ever choose to apply to any of
4 the services, to the Air Force or any other services?

5 A: I'm not aware. My only knowledge is that his eyesight
6 was limiting his ability to fly, and that is what caused the
7 problems with the Air Force Academy.

8 Q: Now, you described that Stephen had some jobs after he
9 went out of school. One of those jobs was at Circuit City;
10 correct?

11 A: Yes, sir.

12 Q: Did you come to understand that Stephen was involved in
13 thefts from Circuit City?

14 A: Yes, sir.

15 Q: Okay. Did you have discussions with him about why he
16 was doing that?

17 A: No, I did not ask why.

18 Q: Did he -- how did you learn about the fact that he was
19 robbing Circuit City?

20 A: My mother told me.

21 Q: Okay. How did she feel about it?

22 A: She didn't understand why he was doing it.

23 Q: Okay. Did you confront Stephen about that?

24 A: I did not. At that point in time, I was in the military
25 several states away. There was no social media at the time.

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1 It was no cell phones at the time. So I would only call home
2 probably every two weeks or so. So Stephen wasn't the
3 context of the discussions whenever I would call.

4 Q: Okay. You've described that during that period after
5 high school, he also started becoming a braggart, had changed
6 in a little way, started doing name dropping; is that
7 correct?

8 A: Yes, sir.

9 Q: Describe that to me in a little bit more detail?

10 A: The most significant time was I came home and Stephen
11 said that he could get me and another friend and him into a
12 club down on Meeting Street. It was one of the popular clubs
13 down there at that time. So when we got there, it was time
14 to go in the club and we couldn't get in. He claimed that
15 the person at the door wasn't the person that he knew.

16 So I was, like, kind of confused. I believed that it
17 wasn't really anyone that he knew there. He was just trying
18 to talk his way into the door.

19 Q: Okay. Did you come to learn that he was conning other
20 people, sometimes out of their money, doing criminal schemes?

21 A: My parents advised me of that.

22 Q: Okay. Did you ever talk to Stephen about the schemes
23 and the conning he was doing with people?

24 A: No, sir.

25 Q: You did not?

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1 Q: No, sir.

2 Q: Why did you not do that?

3 A: I probably didn't want to know. You know, I'm law
4 enforcement. I'm trying to live the right life. I'm
5 catching people doing probably what he's doing. I wasn't
6 aware of what he was doing. I wasn't going to ask what he
7 was doing.

8 Q: Okay. Now, you were aware that he was in custody for a
9 crime that occurred and you described the various prisons
10 that -- that he had been to. When did you become aware of
11 the crimes that he had done which caused him to go to prison
12 at that time?

13 A: Which time, sir?

14 A: The first time.

15 Q: The first time, I had a discussion with my mom and she
16 told me that he was arrested for doing transactions out of a
17 Ford dealership and they weren't the correct transactions.

18 Q: Okay. And that was a violent event; correct?

19 A: The transactions were not. It was when his girlfriend
20 told him that she was going to contact law enforcement --

21 Q: Okay.

22 A: -- for what he was doing.

23 Q: And then did you become aware of what he did to that
24 woman?

25 A: I did not know specifically some of the details until

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1 what I heard through testimony yesterday.

2 Q: Okay. Did you ever talk to Stephen about it?

3 A: No. The only time that I could discuss anything with
4 Stephen was through telephone calls or writing letters to him
5 at the prison or visiting him, and I was not going to ask him
6 any details of a crime because you never know who's looking,
7 reading or hearing your conversation.

8 Q: Okay. And after he got out, why did Stephen not move
9 back with his parents?

10 A: Did you say why did he not?

11 Q: Why did Stephen not move back with his parents after he
12 got out of prison?

13 A: He was not welcome to move back to my -- you know, to
14 the house where my parents were at. I'm sure my father was
15 not willing to accept that.

16 Q: Okay. When Stephen was imprisoned during that time
17 period, did you learn that he was trying to write a book?

18 A: I am aware that Stephen was -- published a book with a
19 professor for a -- an instructional book, yes.

20 Q: Okay. And -- and who helped him type the book up?

21 A: My father actually typed a lot of the transcripts for
22 his part of the book.

23 Q: Okay. And what is your understanding as to how that
24 communication between Stephen and his father occurred to get
25 the information to him to write the book?

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1 A: My understanding is Stephen would handwrite it and then
2 mail it to my parents and my dad would type it on a computer.

3 Q: Okay. While Stephen was in prison, what was your
4 understanding of the communication that he had with his
5 family other than this with writing the book? Did he call on
6 the telephone?

7 A: Yes. He would have conversations. My mom would be the
8 one to answer the phone or if my father answered and the
9 prison announcement at the first part of it said that it was
10 someone calling from the prison, then he would hand the phone
11 to my mother.

12 Q: Okay. Was there a period of time you had some difficult
13 communication with your father?

14 A: Yes, sir.

15 Q: Was there a period of time you didn't communicate with
16 your father?

17 A: Yes, sir.

18 Q: Approximately how long was that?

19 A: Probably three years.

20 Q: Okay. At that time, were you communicating with your
21 mother?

22 A: Yes.

23 Q: Okay. Did you begin communicating with him subsequent
24 to that three years on an irregular basis?

25 A: My parents came and visited me at one of my

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1 installations.

2 Q: Okay.

3 A: While they were traveling.

4 Q: Now, you described that at some point in time there was
5 communication between you and your brother to have him live
6 with you in North Carolina?

7 A: Yes, sir.

8 Q: And is it correct to say that you wanted to put certain
9 conditions on Stephen to live with you?

10 A: I -- I had stated that he had to make sure that he filed
11 all the correct paperwork. I didn't want him to just show up
12 and cross state lines without permission, and that he was
13 going to seek employment while he lived with me, yes.

14 Q: And was one of those conditions that he not do crimes
15 while he was living in your household?

16 A: I do not believe I would've made that statement to him.

17 Q: Well, what would have been those conditions then that
18 you would have had?

19 A: I just described it. He would have to seek employment.

20 Q: Okay. And you discussed those with your wife?

21 A: I did, sir.

22 Q: Was your wife willing to have Stephen live with you?

23 A: As stated before, yes, sir.

24 Q: Okay. But at some point in time, Stephen made the
25 decision not -- not to come; is that correct?

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1 A: I do not know if he decided not to or if the paperwork
2 was filed and not approved. I don't know where the paperwork
3 went or if it was applied.

4 Q: Okay. By paperwork being approved, you mean whether the
5 Department of Probation and Parole would have allowed for the
6 transfer of his supervision to North Carolina; is that
7 correct?

8 A: Correct, sir.

9 Q: Do you know if Stephen ever sought that with Probation
10 and Parole?

11 Q: I do not know.

12 Q: Okay. Let me back up a couple of steps. You described
13 as you were growing up you and your brother would play
14 baseball; correct?

15 A: Yes, sir.

16 Q: And there was some times that you said Stephen got --
17 got hit with a baseball?

18 A: Yes, sir.

19 Q: Was he hit in the head with a baseball or where was he
20 hit?

21 A: His entire body to include the head, yes, sir.

22 Q: You took -- and you just now pointed to your chin?

23 A: No, sir. I had an itch. Sorry.

24 Q: Pardon me?

25 A: I had an itch.

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1 Q: Oh, okay.

2 A: It had nothing to do with my description.

3 Q: Where was he hit?

4 A: Throughout his whole body, sir. He's a catcher. You
5 have to be able to stop the ball from allowing it to get past
6 him. So he's normally in a squatting position, but he would
7 dive to his knees to stop the ball by any means to prevent it
8 from getting past him.

9 Q: Okay. At any time he was hit, did he ever pass out?

10 A: I don't recall passing out. I know that there was a
11 couple times where a runner had collided with Stephen using
12 his shoulder and that Stephen was removed from the game
13 thereafter. I remember two occasions probably that that
14 occurred.

15 Q: Okay. Going back to the death of your brother, Billy,
16 what did you understand to be the circumstances of his death
17 at that time?

18 A: That he was living in a cabin in the Santee area and
19 that someone knocked over the kerosene heater in the -- in
20 the cabin, causing the fire. The fire department said that
21 the fire spread too fast and not in a controlled -- it was an
22 accelerant that caused it to occur. And that he had two
23 gunshot wounds within his body.

24 Q: Okay. Do you know whether there were some reports that
25 were made about a suicide?

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1 A: No, sir. Reports that I am aware of is that law
2 enforcement was covering up his murder.

3 Q: Okay. Now, at that time, was your brother involved in
4 drugs, as far as you know?

5 A: One of his friends alleged that to my parents, yes.

6 Q: Okay. Were your parents concerned about Billy's
7 involvement with drugs?

8 A: My father told Billy if he was having any issues that he
9 would move back to the house and he'd help him work it out.
10 I do not know of the specifics because, as I discussed
11 earlier, my parents would make some decisions, and my brother
12 Stephen and I would only be told what we needed to know based
13 on our age.

14 Q: Okay. Now, at some point in time, you said that you
15 started having discussions with Laura Ling?

16 A: Yes, sir.

17 Q: Okay. And you met her?

18 A: Yes, sir.

19 Q: Describe Ms. Ling to me, please, for the Court?

20 A: You mean physically?

21 Q: That'll be fine. You can start there.

22 A: Caucasian female, sandy brown hair, probably shoulder
23 length, medium build. She's a very, very nice person.

24 Q: Okay. Did you have a good relationship with her?

25 A: For the short time I would say that, yes, it was a good

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1 relationship. I was appreciative of the way she was treating
2 Stephen while they were together. From the time that I had
3 the meal with them and then I spent time at her residence
4 with her and Stephen and her children, I saw great
5 interaction between the two of them.

6 Q: Okay. Compare her physically to your brother, Stephen,
7 as far as size?

8 A: He's probably a couple of inches taller, probably 30
9 pounds --

10 Q: Okay.

11 A: -- more than she was.

12 Q: Did you ever talk to Stephen about his relationship with
13 Laura?

14 A: Yes. He -- he said he was enjoying being with her, yes.

15 Q: Okay. Did he ever describe Laura being violent towards
16 him?

17 A: No. He only described difficulties with the youngest
18 son that he was having as far as discipline and, you know,
19 being the boyfriend, of what role he had in that.

20 Q: Okay. Did you ever meet her daughter, [REDACTED]

21 A: Yes, sir, at the residence.

22 Q: Okay. Describe [REDACTED] to me?

23 A: She was a high school student at that time, slender
24 build. She seemed very outgoing, talkative. She was not shy
25 in interacting with myself or my wife while we were there.

JEFF STANKO - CROSS BY MR. ZELENKA

1 Q: Okay. Describe what you perceived as the relationship
2 that [REDACTED] had, if any, with your brother?

3 A: It appeared that it was a good relationship. I didn't
4 see any friction whatsoever. He did not discuss any friction
5 whatsoever with her.

6 Q: Okay. At some point, you stated that Laura communicated
7 with you with some concern about Stephen's actions; is that
8 correct?

9 A: Yes, sir.

10 Q: And did that concern involve Stephen's criminal activity
11 that he was doing at that time?

12 A: It concerned his actions at the library that she worked
13 at, yes.

14 Q: Okay. And at the library, as you understood it, he was
15 basically conning people to get money from them; is that
16 correct?

17 A: I'm not sure to what extent, but he was offering
18 services and I don't know if he had the ability to come
19 through with that.

20 Q: Okay. But she was concerned about that?

21 A: She was, sir.

22 Q: And part of the concern was that some of the people were
23 going to go to the police, to law enforcement; is that
24 correct?

25 A: I think her greatest fear was that her supervision would

JEFF STANKO - CROSS BY MR. ZELENKA

1 know about what was going on. I don't recall if they were
2 saying they were going to go to the police at the initial
3 time that we had the discussion.

4 Q: All right. And -- and how long did your communication
5 with her occur prior to her death?

6 A: Several times.

7 Q: It occurred several times?

8 A: Yes, sir. We communicated. She communicated to my
9 sister, Peggy, and I both on the telephone and via email.

10 Q: Okay. Did you get with Stephen or communicate with
11 Stephen to try to have him stop doing that?

12 A: I don't recall any discussions on what he was doing or
13 why he was doing it at this time.

14 Q: Okay. Now, you indicated that although you didn't prior
15 to the trial have communication with the lawyers, you did
16 have communication with some folks that were working with
17 Stephen's -- on Stephen's defense; is that correct?

18 A: It was singular, not plural. So it was only Dale Davis.

19 Q: Only with Ms. Davis?

20 A: Correct, sir.

21 Q: And what did the two of you talk about, if you recall?

22 A: She asked me about the same as going on here today, my
23 upbringing, my childhood, interaction with my parents and
24 Stephen, high school, and what I knew about what occurred at
25 the house after I had left the house.

JEFF STANKO - CROSS BY MR. ZELENKA

1 Q: Okay. Did you try to keep track? Did you communicate
2 with Stephen while he was in custody for that crime?

3 A: Yes, sir. We wrote letters.

4 Q: You wrote letters back and forth?

5 A: Yes, sir.

6 Q: Did Stephen ever ask you to come to court in those
7 letters?

8 A: Stephen would only advise me that someone from his team
9 was going to get in contact with me. He would always say for
10 me to be honest with them and that don't worry about what I
11 would say.

12 Q: Okay. Did Stephen want you to come to court in any of
13 those communications?

14 A: I don't recall a specific I need you to be there at the
15 courthouse. No, sir.

16 Q: And at some point on an earlier hearing, you did go to
17 court, didn't you?

18 A: I was present in the courtroom at one of the initial
19 hearings here in Georgetown.

20 Q: Okay. And were you aware when Stephen's trial was going
21 on here in Georgetown County?

22 A: Yes, sir.

23 Q: Why didn't you come?

24 A: Because I really didn't want my face and my family all
25 over the media. I'm not concerned about that being all over

JEFF STANKO - CROSS BY MR. ZELENKA

1 the TV. I'm sure you could be empathetic to that. It's a
2 very hostile time because no one cares about you or your
3 family. All they care about is their ratings.

4 Q: Okay. And was that the reason you didn't come to court?

5 A: Yes, sir.

6 Q: Okay.

7 MR. ZELENKA: Court's indulgence one moment.

8 THE COURT: Yes, sir.

9 BY MR. ZELENKA:

10 Q: Now, back before -- let me ask this. There was another
11 trial involving Stephen in Horry County; correct?

12 A: Yes, sir.

13 Q: Are you aware of that?

14 A: Yes, sir.

15 Q: For Mr. Turner's death?

16 A: Yes, sir.

17 Q: Did you go to court for that proceeding?

18 A: No, sir. I was not asked to go there and I did not go
19 there.

20 Q: Okay. And then there had been another PCR hearing here
21 in Horry County in 2015. Did you know that? Here in
22 Georgetown County. I'm sorry. In 2015?

23 A: I probably would've received a letter from Stephen
24 saying that there -- he's been very forthcoming in providing
25 details about what is going on with his case.

JEFF STANKO - CROSS BY MR. ZELENKA

1 Q: Okay. Did anyone contact you about that proceeding or
2 why you didn't testify at the first trial or anything about
3 your -- like the testimony you gave today concerning your
4 family history?

5 A: I probably would've been contacted by Dale again. I
6 believe I was contacted by her multiple times through the
7 process. Only the very first time that I interacted with
8 Dale did she say would I be willing to have any discussions
9 or appear in trial. I told her I'm always available for
10 questions, but it was never brought up that we want you or
11 we're going to subpoena you, regardless of whether I wanted
12 to or not. If someone wanted me here, they could have
13 subpoenaed me and I would have had to have been here.

14 Q: Okay. Did you ever hear from Drucy Glass or anyone else
15 concerning similar information that you are giving here
16 today?

17 A: I'm not aware of that name, sir.

18 Q: Okay. So the only one that contacted you under your
19 recollection is your brother, Stephen, and Dale Davis; is
20 that correct?

21 A: For prior to the -- I want to be specific. Until the
22 team that came along now, yes.

23 Q: Okay.

24 A: Dale Davis is the only one.

25 Q: All right.

JEFF STANKO - REDIRECT BY MS. VANN

1 MR. ZELENKA: No further questions. Thank you, Mr.
2 Stanko.

3 THE COURT: Any redirect?

4 MS. VANN: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. VANN:

7 Q: Other than that first general question from Ms. Davis
8 when you first met with her, did she ever tell you that she
9 needed you to come to court?

10 A: I don't remember her ever saying that I -- that she
11 wanted me specifically to be in court, no.

12 Q: Did they ever ask you to speak with another person on
13 the team, a woman named Evelyn Califf?

14 A: I'm not sure. I don't recall speaking to anyone other
15 than Dale.

16 Q: Did you talk with a social worker in preparation for
17 this hearing?

18 A: Yes.

19 Q: And was that Arlene Andrews?

20 A: Yes.

21 Q: Has any other investigator or attorney since the trial
22 contacted you to discuss what you've talked about here today?

23 A: Yourself and members of your team have been in contact
24 with me.

25 Q: And did I ever ask you to testify in another hearing?

JEFF STANKO - REDIRECT BY MS. VANN

1 A: You asked me if I would testify and I told you if you
2 feel as though what I have to say was relevant, I would be
3 available to you.

4 Q: And where did you travel from today or yesterday?

5 A: Yesterday, I drove from Atlanta, Georgia.

6 MS. VANN: I have no further questions. Thank you so
7 much for being here.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Any recross?

10 MR. ZELENKA: No, Your Honor. Thank you.

11 THE COURT: Sir, you may step down. Thank you.

12 THE WITNESS: Yes, sir.

13 THE COURT: Call your next witness, please.

14 MR. ANDERSON: Your Honor, if it please the Court, I'd
15 call George Waite.

16 THE BAILIFF: Place your left hand on the Bible and
17 raise your right hand and face the young lady.

18 THE CLERK: Do you solemnly swear or affirm that the
19 testimony you are about to give is the truth, the whole
20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. Please be seated and then state
23 and spell your name for the record.

24 THE WITNESS: My name is George S. Waite, Jr.

25 GEORGE WAITE, being first duly

GEORGE WAITE - DIRECT BY MR. ANDERSON

1 sworn, testified as follows?

2 DIRECT EXAMINATION

3 BY MR. ANDERSON:

4 Q: Mr. Waite, how are you doing today?

5 A: I'm always good every day I wake up.

6 Q: Any day above ground?

7 A: Looking at the top of the daisies rather than the
8 bottom.

9 Q: Yes, sir. Are you presently retired, Mr. Waite?

10 A: Yes, I am.

11 Q: Tell me a little bit about yourself. Have you ever been
12 in the military?

13 A: Retired from the military in 70 -- in '87. Excuse me.

14 Q: And what branch was that?

15 A: Air Force.

16 Q: Okay. How many years were you in the Air Force?

17 A: Twenty years and some days.

18 Q: Now, you heard just a few minutes ago -- I think you
19 were in here while --

20 A: You'll have to excuse me. My hearing aids ain't
21 working.

22 Q: All right. I'll come a little bit closer.

23 A: There you go.

24 Q: Were you in here a few minutes ago when Jeff Stanko was
25 testifying?

GEORGE WAITE - DIRECT BY MR. ANDERSON

1 A: Yes.

2 Q: Did you hear that Stephen had applied to go to the Air
3 Force Academy?

4 A: I did.

5 Q: And did you ever work at Turbeville?

6 A: Yes, I did.

7 Q: How long were you at Turbeville Correctional Institute?

8 A: From before it opened in '94 until 2001.

9 Q: Was Mr. Stanko there? And by Mr. Stanko, I'm referring
10 to Stephen. Was Stephen there from maybe 1996 until you left
11 in 2001?

12 A: Yes, he was.

13 Q: And when you started off at Turbeville, what was your
14 first position?

15 A: I was a sergeant in charge of -- not in charge, but a
16 sergeant of security.

17 Q: All right. And did you have another job later on?

18 A: Sure, I did. I was a lieutenant in lockup and then I
19 went to captain as a disciplinary hearing officer and,
20 finally, I was the chief of security.

21 Q: When you were the disciplinary hearing officer, did you
22 have any interaction with Stephen?

23 A: I don't recall any action against Stephen, but I know
24 Stephen would talk to me about cases for the inmates. The
25 inmates were not very smart.

GEORGE WAITE - DIRECT BY MR. ANDERSON

1 Q: Let me rephrase that question another way. Did you ever
2 have any trouble out of Stephen?

3 A: No.

4 Q: All right. Did Stephen ever work with you on other
5 cases?

6 A: He did and, in fact, he gave me his point of view, but I
7 had to do state rules for everything.

8 Q: I understand. Did Stephen and you ever work along with
9 the warden and the associate warden on, I guess, any inmate
10 grievances?

11 A: I didn't necessarily get involved in those
12 conversations, but yes, Stephen worked with the warden and
13 the associate warden.

14 Q: And was he chosen for that position by other inmates?

15 A: The inmates did, in fact, ask for him to be the inmate
16 grievance counselor. However, a board of staff had to decide
17 whether or not he was right for the job.

18 Q: How many inmates did you have at Turbeville during that
19 time?

20 A: Probably between 1,300 to 1,400 average. It might've
21 gone over, might've gone a little bit under, but --

22 Q: 12- to 1,500 would be fair?

23 A: That's right.

24 Q: A fair range?

25 A: Good range.

GEORGE WAITE - DIRECT BY MR. ANDERSON

1 Q: Did Stephen help the younger men that were there?

2 A: Yes, he did.

3 Q: What did he do?

4 A: A lot of these -- like I told you before, a lot of the
5 younger people were not very intelligent, and Steve had a
6 good intelligence; so he was trying to help them when he
7 could.

8 Q: Did he ever help them with their legal cases?

9 A: Oh, yes. I saw him talking about it.

10 Q: Did he ever help them as far as trying to obtain their
11 education?

12 A: Trying to give them their rights I would say when they
13 came to the hearing.

14 Q: Would you agree with me that between the time of, I
15 guess, 1996 and then until you left in 2001 that Stephen was
16 a benefit? He was a help to the inmates, as well as the
17 staff at Turbeville?

18 A: I would say most definitely he was an aide to the
19 inmates and he was always respectful of staff.

20 Q: Did Stephen ever participate in something called
21 Operation Behind Bars?

22 A: Yes, he did.

23 Q: And tell me a little bit about that. We heard about it
24 yesterday, but tell me what you know about that?

25 A: We selected -- I'm going to say it was ten inmates.

GEORGE WAITE - DIRECT BY MR. ANDERSON

1 Anytime younger people, high school kids or below, were
2 getting in trouble, it was just like Operation Scared
3 Straight today. We brought them into the prison. Inmates
4 had to treat them appropriately while they were there. No
5 contact, no nothing with them, but they just generally tried
6 to scare the soup out of them, you know, so they wouldn't
7 come to jail.

8 Q: Yes, sir. And Stephen was one of those inmates that was
9 selected?

10 A: Yes, he was.

11 Q: Do you know how many years he did that?

12 A: I believe he was still doing it when I left.

13 Q: So at least four or five years; right?

14 A: Four or five years. That's right.

15 Q: Was it considered an honor to be allowed to be one of
16 those inmates?

17 A: Oh, yeah. Yes, definitely.

18 Q: And I think you indicated just a second ago you had to
19 be selected, but then a separate board would vote on whether
20 or not they were qualified or acceptable?

21 A: The inmates first elected -- not elected, but requested
22 that he be their representative, but then staff had to sit
23 down and say, well, we'll look at his disciplinary record.
24 We'll look at everything he's got to decide whether he would
25 be an ideal person to be the inmate representative for the

GEORGE WAITE - DIRECT BY MR. ANDERSON

1 whole prison.

2 Q: And he would have young boys as well as young girls
3 coming to the prison; is that right?

4 A: That's right. On that Operation Behind Bars.

5 Q: And never gave you or anyone else a bit of trouble?

6 A: No.

7 Q: Mr. Waite, did any other attorney contact you for the
8 first trial when this case was originally tried in
9 Georgetown?

10 A: No.

11 Q: Did any prior attorney contact you, other than this
12 group right here, to come to this trial?

13 A: No. Just y'all.

14 Q: Has any attorney ever asked you to come to another
15 hearing, such as Mr. Axelrod or Tristan Shaffer or Bobby
16 Frederick?

17 A: No, sir.

18 MR. ANDERSON: Court's indulgence for a moment, Your
19 Honor.

20 THE COURT: Yes, sir.

21 MR. ANDERSON: Judge, that's all the questions I have of
22 Mr. Waite.

23 THE COURT: Hold on a minute, Mr. Zelenka? Hold on.

24 MR. ZELENKA: Thank you.

25 THE COURT: All right. Cross-examination.

GEORGE WAITE - CROSS BY MR. ZELENKA

1 MR. ZELENKA: Thank you.

2 CROSS-EXAMINATION

3 BY MR. ZELENKA:

4 Q: Mr. Waite, let me move closer because I have hearing
5 problems too.

6 A: There you go. Thank you.

7 Q: Although I hear you very well. Let me just -- there are
8 just a few questions I would like to ask you just so I have a
9 little bit better understanding.

10 When he became part of this disciplinary team that you
11 have described that he was elected by other inmates, did he
12 get any benefits from being in that position?

13 A: No. He got no benefits, but he wasn't part of the
14 disciplinary team. I was in charge of all the disciplinary,
15 but what Stephen did was try to aid the inmates that had
16 received disciplinary reports on them and try to give them
17 their rights and what they could and what they couldn't lose.

18 Q: Okay.

19 A: Like I say, a lot of them were not very smart. A lot of
20 them couldn't even read or write, you know. So --

21 Q: Okay. So he was essentially working for inmates against
22 some institutional policies or practices; is that correct?

23 A: That's right.

24 Q: Okay. And roughly how many inmates over that time frame
25 did he assist? Do you have any idea?

GEORGE WAITE - CROSS BY MR. ZELENKA

1 A: I know I did, in the couple years I did disciplinary
2 hearings, over 2,000, but I don't know how many Stephen
3 actually helped with their cases.

4 Q: Okay. How many other inmates like Stephen were in that
5 same process? Was he the only one doing this?

6 A: Only one allowed to do it.

7 Q: Okay. And on Operation Behind Bars, describe that --
8 the purpose of Operation Behind Bars again?

9 A: The original purpose for it was to prevent or attempt to
10 prevent younger individuals who had -- are bordering on going
11 to jail or not going to jail to give them an opportunity to
12 see exactly what jail was like. Eat chow from the chow hall
13 to see what they like or don't like about that. Be told
14 when, where, how, and what to do, everything they do for the
15 day, in an effort to prevent them from coming back to jail.

16 Q: Okay. And Stephen did that part of that team for about
17 five years?

18 A: Yeah. Four or five. I'm not sure. He was still on the
19 team when I left Turbeville.

20 Q: Okay. And what did Stephen tell people about the
21 problems in jail and why you should not commit future crimes
22 to submit yourself to the jail?

23 A: I'm not going to sit here and tell you -- it was 18
24 years ago. I'm not going to sit here and tell you I can
25 remember exactly what he said, but it was basically, hey, if

GEORGE WAITE - CROSS BY MR. ZELENKA

1 you want some of this, here's what you're going to get, and
2 just spell out word for word what happens on a daily basis,
3 what they can look forward to, how they have disciplinary
4 hearings and everything for anything they did wrong, how they
5 can get a disciplinary hearing to take away good time they've
6 earned, just extend their period in jail.

7 Q: Uh-huh. And how often did Stephen tell people that?

8 A: We probably -- probably had Operation Behind Bars about
9 once a month, maybe once every two months.

10 Q: Uh-huh.

11 A: When they would get a significant group of people in the
12 civilian world that were acting out, let's call it.

13 Q: Okay. And do you recall when Stephen was released from
14 prison?

15 A: I'm sorry?

16 Q: Do you know when Stephen was released from prison?

17 A: I'm going to say somewhere, just a guess now, about
18 2004, I think it was.

19 Q: Okay.

20 A: Just a guess.

21 Q: And how long after he had participated in Operation
22 Behind Bars did Stephen commit these crimes involving the
23 murder of Ms. Ling and commit these other crimes?

24 A: If you want me to tell you, I'd just have to guess.

25 About 2006 or something like that, 2007. I was already

GEORGE WAITE - CROSS BY MR. ZELENKA

1 retired from the Department by then.

2 Q: That he was trying to encourage people not to do --

3 A: That's right.

4 Q: -- exactly what he did?

5 A: Exactly what he did.

6 Q: On a short time period while he was under the
7 supervision of the Probation and Parole Department; correct?

8 A: Yes.

9 MR. ZELENKA: Thank you. I have no further questions.

10 THE COURT: Any redirect?

11 MR. ANDERSON: No, sir, Your Honor.

12 THE COURT: Sir, you may step down. Thank you.

13 THE WITNESS: All right.

14 THE COURT: Call your next witness.

15 MR. ANDERSON: Judge, of course, I'd ask that he be
16 released from any subpoena.

17 THE COURT: Any objection?

18 MR. ZELENKA: No objections, Your Honor.

19 THE COURT: Mr. Waite, you're released from any
20 subpoena. You're free to go. Have a nice day.

21 Your next witness, please.

22 MR. ANDERSON: Judge, I'd call George Windley.

23 THE BAILIFF: Place your left hand on the Bible and
24 raise your right hand and face the lady.

25 THE CLERK: Do you solemnly swear or affirm that the

GEORGE WINDLEY - DIRECT BY MR. ANDERSON

1 testimony you are about to give is the truth, the whole
2 truth, and nothing but the truth, so help you God?

3 THE WITNESS: I will.

4 THE CLERK: Thank you. Please be seated and then state
5 and spell your full name for the record.

6 THE COURT: State your full name for the record, please.

7 THE WITNESS: My name is George Philip Windley, Sr.

8 THE COURT: Spell your last name for the record.

9 THE WITNESS: W-i-n-d-l-e-y.

10 THE COURT: Thank you, sir.

11 GEORGE WINDLEY, being first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ANDERSON:

15 Q: Mr. Windley, I know that you are capable of speaking
16 because of your background.

17 A: Thank you.

18 Q: And let's talk a little bit about your background, if we
19 can. What are you presently doing as far as work is
20 concerned?

21 A: I am the senior pastor of the Ebenezer Baptist Church in
22 Manning, South Carolina.

23 Q: How long have you been the pastor there?

24 A: This year is 41 years.

25 Q: And did you ever work with the Department of

GEORGE WINDLEY - DIRECT BY MR. ANDERSON

1 Corrections?

2 A: Yes.

3 Q: How long have you worked with the -- I guess I'm going
4 to ask this two different ways. How long were you actually
5 employed with the Department of Corrections?

6 A: I was employed from 1989 until 2015.

7 Q: All right. And do you still do volunteer work in the
8 Department of Corrections?

9 A: Yes.

10 Q: And what do you do for the Department of Corrections?

11 A: Well, I'm a current active volunteer at Turbeville, also
12 at Lee, and I also share as the Baptist E&M Convention Prison
13 Ministry coordinator. I've been doing that for 17 years.

14 Q: Have you -- and you may have just answered this. Have
15 you ever been part of the Baptist Educational Missionary
16 Convention?

17 A: Yes.

18 Q: How long have you been doing that?

19 A: Forty-three years.

20 Q: And have you ever been selected to be the commissioner
21 on the national convention?

22 A: Yes.

23 Q: How long have you done that?

24 A: Seven years.

25 Q: Are you selected by other churches? Other pastors?

GEORGE WINDLEY - DIRECT BY MR. ANDERSON

1 A: Other churches and other pastors and the president.

2 Q: Okay. Now, when were you at Turbeville?

3 A: After I left Allendale in '89, I started at Turbeville
4 as the first chaplain in 1994.

5 Q: And if Stephen -- if he got there in 1996, you would've
6 been there at that time?

7 A: Yes.

8 Q: Did you later leave Turbeville and go to McDougall?

9 A: Yes.

10 Q: When did you do that?

11 A: I went to McDougall just to volunteer with a chaplain
12 that I helped train. I took a group of church members with
13 us and other volunteers to do a service.

14 Q: Did you have any interaction with Stephen while he was
15 at Turbeville?

16 A: Yes.

17 Q: How often did you see Stephen?

18 A: I saw Stephen almost every day in different areas of the
19 institution as the inmate coordinator, and he shared with a
20 lot of inmates. He helped them to ascertain their GEDs.
21 Many of the inmates could not read nor write, and he assisted
22 them.

23 Q: Do you think he had an approachable-type manner with
24 other inmates? Did he ever appear to be, well, don't talk to
25 me, I'm better than you or anything like that?

GEORGE WINDLEY - DIRECT BY MR. ANDERSON

- 1 A: He was very approachable, not only with the inmates but
2 with the staff.
- 3 Q: Do you think the other inmates respected him?
- 4 A: Yes.
- 5 Q: Did he ever --
- 6 A: Many of them relied on him.
- 7 Q: To your knowledge, did he ever try and con them or beat
8 them out of something?
- 9 A: Not to my knowledge.
- 10 Q: Would you consider Stephen a help to Turbeville?
- 11 A: Yes.
- 12 Q: Do you think he could be a help in any facility where
13 he's presently housed?
- 14 A: I really believe so.
- 15 Q: Would it be a safe statement to say that some people
16 just do better in a structured environment?
- 17 A: Of course.
- 18 Q: Did Stephen come to your chapel very much?
- 19 A: He came periodically.
- 20 Q: Did he encourage other people to go?
- 21 A: I was informed that he did.
- 22 Q: You were informed that by other inmates?
- 23 A: By other inmates, and some even said that I'm here
24 because of Stephen invited us to come.
- 25 Q: Did he ever have a saying with you or a phrase with you?

GEORGE WINDLEY - DIRECT BY MR. ANDERSON

1 A: Yes.

2 Q: And what was that?

3 A: Well, Stephen -- when he would come and sit down --
4 well, he was quite busy. I mean you have over a thousand
5 inmates and all of them need -- most of them need help with
6 their cases, getting their GEDs.

7 He was in Operation Behind Bars, and there were groups
8 that came from various counties, such as Myrtle Beach, Horry
9 County, Florence County, Sumter County, Clarendon County.
10 Operation Behind Bars. He was a part of that.

11 Q: What was the catchphrase that you and he would have or
12 the saying that you and he would have?

13 A: I'd say, Stephen, are you still looking up? And there
14 was a phrase that I would ask the inmates. What's the word
15 for today? What's the best word for today? And many of them
16 say God is the best word.

17 Q: When you went from, I guess, Turbeville over to -- I'm
18 sorry. Let me back up. When Stephen was transferred from
19 Turbeville to McDougall, did you ever go and preach at
20 McDougall?

21 A: Yes.

22 Q: Did Stephen attend that service?

23 A: He came. I met him on the yard. When I got there, he
24 knew I was coming and we met on the yard in front of the
25 chapel and conversed for a while.

GEORGE WINDLEY - DIRECT BY MR. ANDERSON

1 Q: And I think you've already indicated that Stephen was a
2 part of Operation Behind Bars?

3 A: Yes.

4 Q: Was he -- and I think you've indicated that he also
5 helped other inmates get their education, their GED, things
6 like that?

7 A: Yes.

8 Q: To your knowledge, was Stephen ever a disciplinary
9 problem?

10 A: Not to my knowledge, no.

11 MR. ANDERSON: Court's indulgence just for a moment,
12 Your Honor.

13 THE COURT: Yes, sir.

14 MR. ANDERSON: Mr. Windley, that's all the questions I
15 have. Thank you for coming today. I think the State may ask
16 you a question or two.

17 THE WITNESS: All right.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. ZELENKA:

21 Q: Is it Mr. Windley?

22 A: Yes.

23 Q: Okay. Did Stephen -- were you present during the
24 Operation Behind Bars sessions?

25 A: Yes. There were times I was there.

GEORGE WINDLEY - CROSS BY MR. ZELENKA

1 Q: Did Stephen seem to enjoy that?

2 A: Yes.

3 Q: Did he like being -- was he one of the main speakers?

4 A: Yes. All of -- all of them spoke encouragingly to those
5 young people, and some of them even came from the Department
6 of Juvenile Justice, yes.

7 Q: Okay. Was he the main speaker?

8 A: All of them were on the same level.

9 Q: Okay.

10 A: Yes.

11 Q: Do you remember what he would tell the teenagers?

12 A: I remember some of the things that some of them got said
13 to them. In fact, they would give how they were reared. How
14 they were reared, the homes they came out of.

15 And let's say back 50 years ago, 74 percent of us came
16 out of two-parent homes, but now, less than 24 percent.

17 Fatherless homes. It's a terrible -- especially, sometimes
18 fathers -- in fact, is I interviewed, many of the inmates
19 came out of fatherless homes. That's why we started a group
20 called Fatherhood Initiatives and Manhood Training. You'd be
21 surprised, perhaps I'm not anymore --

22 Q: Uh-huh.

23 A: -- of what happens to a child that grows up in a home
24 without a father who is nurturing, supportive, godly, and
25 concerned.

GEORGE WINDLEY - CROSS BY MR. ZELENKA

1 One person even said growing up without a father -- one
2 of our presidents said this. Growing up without a father
3 leaves a hole on the inside of a boy, and that hole cannot be
4 filled. It may be able to be managed but not filled. That's
5 why nurturing and mentoring is so important.

6 Q: Okay. In your discussions with Stephen, did he tell you
7 that he had come from a fatherless home?

8 A: I don't recall. I don't recall that. That was some
9 years ago.

10 Q: Okay.

11 A: But it does have a great bearing.

12 MR. ZELENKA: I don't think I have any further
13 questions. Thank you.

14 THE COURT: Hold on a minute.

15 Any re -- any redirect?

16 MR. ANDERSON: No, sir, Your Honor. I believe he said
17 it all.

18 THE COURT: Sir, you may step down. Thank you.

19 THE WITNESS: Thank you.

20 MR. ANDERSON: Of course, Your Honor, we'd ask that he
21 be released from that subpoena.

22 THE COURT: Any objection?

23 MR. ZELENKA: No objection, Your Honor.

24 THE COURT: Mr. Windley, you're released from your
25 subpoena. You have no further responsibility here. You are

1 free to go, if you so desire.

2 THE WITNESS: Thank you.

3 THE COURT: Have a nice day.

4 MR. ANDERSON: Judge, may we approach for a moment?

5 THE COURT: Yes.

6 MR. ANDERSON: Thank you.

7 (WHEREUPON, a bench conference was held as follows.)

8 MR. ANDERSON: Judge, our next witness is Arlene
9 Andrews. It's going to be a little lengthy, if you want to
10 take a morning break.

11 THE COURT: I was fixing to.

12 MR. ANDERSON: You're the man.

13 MR. ZELENKA: Frequently, my cross-examinations of a
14 social worker are fairly long. I mean if you want to start,
15 it's up to you.

16 THE COURT: No. We're going to take a break right now.

17 MR. ZELENKA: Okay.

18 MS. SCRANTOM: I did hear from Tristan. I copied Your
19 Honor. He said he'll be here at 12:45. He got hung up this
20 morning.

21 MS. VANN: That's fine. We won't be done before that.

22 MS. SCRANTOM: Okay.

23 THE COURT: Is that all y'all are putting up is him? Is
24 Dr. Wu going to be long too?

25 MS. VANN: Shorter than the social worker. And he has a

1 flight; so we're hoping to get him done by 3:30 or four so he
2 can get on his flight out.

3 THE COURT: All right.

4 (WHEREUPON, the bench conference ended and the
5 proceedings resumed as follows.)

6 THE COURT: All right. We're going to stand down for
7 just a few minutes.

8 (WHEREUPON, there was a break in the proceedings from
9 10:58 a.m. until 11:19 a.m., after which the proceedings
10 resumed as follows.)

11 THE COURT: All right. Is the State ready to proceed?

12 MS. SCRANTOM: Yes, Your Honor.

13 THE COURT: Applicant?

14 THE BAILIFF: Judge, do you care for any water?

15 THE COURT: Sir?

16 THE BAILIFF: Do you care for another bottle of water?

17 THE COURT: I'm okay right now.

18 Ms. Vann, are you all ready to proceed?

19 MS. VANN: Yes, Your Honor. Though I'm not entirely
20 sure where Mr. Anderson is. I have texted him and,
21 hopefully, he will return shortly.

22 The applicant calls Dr. Joseph Wu.

23 THE COURT: Sir, if you'd come around to be sworn,
24 please.

25 THE BAILIFF: Place your left hand on the Bible and

DR. JOSEPH WU - DIRECT BY MS. VANN

1 raise your right hand.

2 THE CLERK: Do you solemnly swear or affirm that the
3 testimony you are about to give is the truth, the whole
4 truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE COURT: Thank you. Please be seated and then state
7 and spell your full name for the record.

8 THE WITNESS: My full name is Joseph Chong-Sang Wu,
9 J-o-s-e-p-h C-h-o-n-g hyphen S-a-n-g W-u.

10 DR. JOSEPH WU, being first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. VANN:

14 Q: Thank you, Dr. Wu. Could you start by giving us a brief
15 background of your employment history?

16 A: Yes. I was employed at the University of California,
17 Irvine, as a professor in the Department of Psychiatry for 30
18 years from, I would say, 1978 to 2018, and then I -- I
19 recently retired, but I continue to serve as a professor
20 emeritus. So I continue to teach, do research, and do see
21 patients with the University.

22 And so that's it. You know, so basically, I've been
23 employed at one place my entire professional career.

24 Q: And what is your educational background?

25 A: Well, I did my undergraduate in pre-medical education at

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1 Stanford University. I graduated from there with honors in
2 1978. After that, I did my medical school training at the
3 University of California, Irvine, where I obtained my MD in
4 1982. After that, I did a residency in psychiatry, which I
5 completed with honors in 1986, and after that I did a two-
6 year fellowship in PET and MRI brain imaging at the
7 University of California, Irvine, which I completed in 1988.

8 Q: So as part of your medical training, did you focus on a
9 particular field?

10 A: Yes. I focused in the area of neuropsychiatry.

11 Q: Are you board certified as a psychiatrist?

12 A: I am board certified in the field of psychiatry.

13 Q: What does being board-certified entail?

14 A: Board-certified means that I completed a residency in
15 psychiatry and I passed a comprehensive written examination
16 about psychiatry. That I passed a practical examination
17 where I'm asked to interview a patient who I have never seen
18 before in front of a panel of examiners, and then they rate
19 how I interviewed the patient and then they rate my
20 diagnostic assessment of the patient. So this indicates that
21 one has completed a training in the core aspects of
22 psychiatry and that one has passed both a written as well as
23 a practical exam.

24 Q: Are you a member of any professional societies?

25 A: Yes. I'm a member of the American Psychiatric

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1 Association. I'm actually a distinguished fellow in the
2 American Psychiatric Association. That's an honor that's
3 bestowed upon a select minority of psychiatrists who have
4 served with distinction in some capacity, and my service was
5 primarily in the area of clinical research in neuroimaging.
6 And I'm also a member of the Society of Biological
7 Psychiatry, and I'm also a member of the Society of Nuclear
8 Medicine.

9 Q: And you said you've worked most of your time at the
10 University of California, Irvine; is that correct?

11 A: Yes.

12 Q: And as part of that experience, were you -- did you have
13 a clinical practice as well?

14 A: Well, as part of being a faculty member in the
15 Department of Psychiatry at the University of California,
16 Irvine, I have three main responsibilities.

17 One of them was to teach future physicians or
18 psychiatrists, and so I gave lectures to medical students and
19 to residents in psychiatry.

20 But then I also have a clinical role where I would see
21 patients and take care of patients, and that included
22 reviewing their PET scans, reviewing their MRI scans, meeting
23 patients, talking to patients, prescribing medications for
24 them, doing therapy with them.

25 And then it also included doing research so that I wrote

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1 and published a number of peer-reviewed articles on the use
2 of brain imaging technology such as PET scans or an MRI in
3 the assessment of neuropsychological disorders such as
4 traumatic brain injury or senile dementia or schizophrenia or
5 depression or cocaine addiction.

6 And so those were my three main responsibilities:
7 teaching, patient care, and research.

8 Q: Now, you said that you did research in -- have you
9 published peer-reviewed articles or book chapters?

10 A: Yes. I've published almost 70 peer-reviewed articles in
11 the area of brain imaging and neuropsychiatric disorders. So
12 I've published many articles on PET scans and various types
13 of neuropsychiatric disorders, such as traumatic brain
14 injury, Parkinson's disease, Alzheimer's disease,
15 schizophrenia, depression, bulimia, stuttering, addiction,
16 and I've also published on MRI studies of traumatic brain
17 injury and carbon monoxide hypoxia, toxic encephalopathy,
18 things like that.

19 MS. VANN: May I approach, Your Honor?

20 THE COURT: Yes, ma'am.

21 BY MS. VANN:

22 Q: I'm handing you a document. If you could take a look at
23 this and tell us what it is?

24 A: This is -- this is my CV, which lists articles I have
25 published and the presentations I have given.

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1 Q: And did you prepare this?

2 A: Yes, I did.

3 Q: And is it your current CV?

4 A: I believe it's fairly current, yes.

5 Q: And does it reflect your publications?

6 A: Yes, it does.

7 Q: And your presentations that you've given?

8 A: Yes, it does.

9 Q: And any grants or research awards that you've received?

10 A: Yes. It also includes grants that I have received. I
11 received grants from the National Institute of Mental Health.
12 I've received over \$1 million worth of funding from the
13 National Institute of Mental Health to look at brain PET
14 imaging and psychiatric disorders such as depression.

15 And I've also received funding from various foundations,
16 such as the National Association for Research in
17 Schizophrenia and Depression, and I've also been a co-
18 investigator on a number of pharmaceutical brain imaging
19 studies.

20 MS. VANN: Your Honor, at this time, I would move to
21 have this admitted as Applicant's Exhibit 24.

22 THE COURT: 26.

23 MS. VANN: I'm sorry, 26.

24 THE COURT: Any objection?

25 MS. SCRANTOM: No objection to the entry of the CV.

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1 THE COURT: So admitted without objection.

2 (WHEREUPON, Plaintiff's Exhibit Number 26, CV of Dr. Wu,
3 was admitted into evidence.)

4 BY MS. VANN:

5 Q: Dr. Wu, how long have you been involved in administering
6 and interpreting brain imaging?

7 A: Well, I've been involved with administering and
8 interpreting brain imaging actually for over 30 years. So I
9 would say that I actually started with administering and
10 interpreting brain imaging while I was still a resident in
11 psychiatry; so even before I finished my residency. I
12 finished my residency in 1986, and so I would say that it's
13 well over 30 years.

14 Q: And how long have you been working specifically with PET
15 scans?

16 A: Well, I actually started working with PET scans actually
17 in the early '80s. And so actually when I was actually still
18 a medical student, I actually did a rotation at the National
19 Institute of Health and worked on PET scan studies of
20 schizophrenia and depression as a medical student in the
21 early '80s, in '81 and '82, and so I would say it's, you
22 know, close to -- you know, over 35 years.

23 Q: Okay. Could you give us an explanation of what
24 administering a PET scan entails?

25 A: Yes. A PET scan is short for positronic emission

1 tomography, and a positron is a positive electron. Electrons
2 in our universe are normally negatively charged, but we can
3 use a cyclotron to create an antimatter version of an
4 electron which has a positive charge. Now, the advantage to
5 creating an antimatter version of the electron is that we can
6 tag a sugar molecule with an antimatter emitter, the positron
7 emitter, and we can inject it into a patient.

8 And sugar is the main fuel for the neuronal firing in
9 the brain. Sugar is like the gasoline for the engine in a
10 car. So areas of the brain where the neurons are firing
11 consume more sugar and if you have a positron emitter
12 attached to the sugar molecule, the positron or the
13 antimatter version of the electron will come off the sugar
14 molecule and will combine with negative electrons in the
15 brain.

16 And then the positron and electron are transformed into
17 energy rays in a process called annihilation decay where the
18 mass in the positron and electron are annihilated and
19 converted into energy using Einstein's famous equation, $E=mc$
20 squared where E equals energy and M equals mass. And so the
21 mass of the electron and positron transform into two energy
22 rays that come off at 180 degree angles.

23 And the way the PET scanner works is it has a series of
24 concentric rings which have crystals which are specifically
25 tuned to detect the energy ray created by the transformation

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1 of the mass in the positron and the electron.

2 THE COURT: Doctor, hold on just a minute. I need you
3 to slow down for me. Okay?

4 THE WITNESS: Yes, sir, Your Honor.

5 THE COURT: You're talking pretty fast. I'm having
6 trouble following you or keeping up with what you're saying,
7 but I'm asking you to slow down for my court reporter.

8 THE WITNESS: I'm sorry, Your Honor. I will.

9 THE COURT: You're okay.

10 THE WITNESS: I will try to slow down.

11 THE COURT: I just want you to slow down for her benefit
12 more than anything.

13 THE WITNESS: Yes. I apologize.

14 THE COURT: Okay.

15 THE WITNESS: I will try to go slower.

16 THE COURT: And I apologize for interrupting you, but I
17 want you to slow down a little bit.

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Okay. Thank you. You may continue.

20 THE WITNESS: Okay.

21 BY MS. VANN:

22 A: And so the PET scanner has built-in coincidence circuits
23 so that when you have two crystals that are coincidentally
24 tripped by energy rays that emanate from the transformation
25 of the matter into energy rays, the computer essentially

1 draws a line between these two crystal detectors.

2 And so areas of the brain that has lots of sugar
3 molecules is going to be the source of lots of energy rays
4 that emanate from that part of the brain, and they will be
5 detected by multiple lines that intersect in those areas of
6 the brain.

7 And so essentially the PET scanning works by looking at
8 the intersection of the energy rays that are formed by the
9 glucose molecules positron emitters, and we can then color
10 code how much sugar is being consumed in different areas of
11 the brain. So areas of the brain that consume a lot of sugar
12 will be color-coded hot colors, like red or yellow, and areas
13 of the brain that consume less sugar will be color-coded
14 cooler colors, like green or blue.

15 And we can create a color brain map that corresponds to
16 how much sugar is being consumed in the brain, and this color
17 brain map can be very useful for scientists who are trying to
18 understand how the brain works, but also to clinicians
19 because of certain patterns of color that show up in certain
20 kinds of diseases.

21 And so, for example, with Alzheimer's disease, you are
22 going to see that there is less sugar being consumed in the
23 back of the brain in the parietal cortex, in this area here.
24 And so on a color brain map, those areas of the brain in the
25 back here will be cooler colors, like green or blue, compared

1 to the normal yellow or red.

2 And so -- and so that's how PET scans work.

3 Q: How many PET scans have you administered in your career?

4 A: Thousands. I would say probably 4- or 5,000 would be my
5 estimation.

6 Q: How many PET scans have you interpreted?

7 A: I would say I have been involved with the review and
8 interpretation of most of those PET scans. Many of them were
9 research PET scans for, you know, like looking at
10 schizophrenia or looking at pharmaceutical effects. Many of
11 them are clinical.

12 And so I would say I've been involved with reviewing
13 these scans for both research and clinical purposes. For
14 clinical purposes, I would say that I've looked at, you know,
15 probably hundreds, maybe thousands of them.

16 Q: Have you previously been qualified in courts to testify
17 regarding the administration and interpretation of PET scans?

18 A: On many occasions.

19 Q: In criminal cases?

20 A: In both criminal and in civil matters, yes.

21 Q: And in what jurisdictions?

22 A: In multiple jurisdictions. In Florida and in many other
23 states throughout the United States.

24 Q: Have you previously been involved in connecting
25 evaluations in capital cases?

DR. JOSEPH WU - DIRECT BY MS. VANN

1 A: Yes. I've been involved in multiple capital mitigation
2 cases.

3 Q: Do you know approximately how many?

4 A: I would say well over 50.

5 Q: And in what jurisdictions have those cases been?

6 A: Again, in multiple jurisdictions. California, Florida,
7 Arizona, Indiana, Alabama, Oregon, Washington.

8 MS. VANN: Your Honor, at this time, I would ask that
9 Dr. Wu be qualified as an expert in psychiatry and the
10 administration and interpretation of PET scans.

11 THE COURT: Anything from the State?

12 MS. SCRANTOM: Your Honor, we would note first that Dr.
13 Wu has already been qualified as an expert in this particular
14 field in the trial of this case and, secondarily, I would ask
15 a few questions of the witness on voir dire, if I may.

16 THE COURT: Yes, ma'am. You may.

17 VOIR DIRE

18 BY MS. SCRANTOM:

19 Q: Dr. Wu, good morning.

20 A: Good morning.

21 Q: Are you aware whether some courts in this country have
22 rejected your area of expertise?

23 A: I would say that there have been a couple of cases I can
24 recall where the scans were not admitted into evidence.

25 Q: Do you recall where that was?

DR. JOSEPH WU - VOIR DIRE BY MS. SCRANTOM

1 A: I believe that one was in California maybe 20 years ago
2 and then one was somewhere in the Midwest, maybe 15 -- 20
3 years ago.

4 Q: Okay. And what percentage of the work that you do
5 currently is in the area of being an expert witness?

6 A: Currently, I would say that probably since I retired
7 from the University and I've opened up a private practice, I
8 would say that probably 90 percent of my time is spent doing
9 expert witness work.

10 Q: And what percentage of that work is specifically in
11 capital cases?

12 A: I would say approximately half is in capital mitigation
13 and the other half is probably in civil cases.

14 Q: And are you licensed to practice medicine and, if so,
15 where?

16 A: I'm licensed to practice medicine in the state of
17 California.

18 Q: When is the last time you yourself have conducted a PET
19 scan on a patient?

20 A: Well, the last time I actually ran the machine and
21 injected a patient was many years ago. I would say, you
22 know, probably well over five years ago.

23 Q: Do you still maintain a working laboratory for PET scan
24 imagery in California?

25 A: I still have a working relationship with the PET scan

DR. JOSEPH WU - VOIR DIRE BY MS. SCRANTOM

1 laboratory at the University of California, Irvine, where I
2 still send patients of mine over for a PET scan.

3 Q: Okay. And looking at your CV, I see that recently you
4 presented it looks like in Houston, Texas, doing a comparison
5 of F-18 FDG PET glucose scans in murderers with brain injury
6 versus civil injury patients versus normal controls. Do you
7 recall that presentation?

8 A: Yes, I do.

9 Q: Can you summarize for us what that presentation was
10 about?

11 A: Well, what I did is I looked at, you know, I believe a
12 group of individuals who had been convicted of murders who
13 had -- who we had done PET scans on, many capital mitigation
14 cases, and then I looked at a group of individuals who had a
15 history of brain injury who we had done PET scans on, many
16 civil litigants, and then I looked at a group of normal
17 controls and compared these three groups statistically.

18 Q: And looking at your publications, it looks like in the
19 past three or four years -- well, this looks like it might be
20 a presentation. I apologize. You also presented in San
21 Diego in March of 2016 on brain-based data by forensic
22 evaluators in a courtroom setting. Do you recall that?

23 A: Yes, I do. I think that was at the Association of
24 Forensic Psychology.

25 Q: That looks to be right, Dr. Wu. Do you recall what that

1 presentation was about?

2 A: Well, I was asked by a neuropsychologist who I had
3 worked with if I could join her in a panel to discuss how
4 neuropsychological testing data could be integrated with
5 neuroimaging in the use of a forensic setting.

6 Q: Okay. And in 2015, did you present on the current state
7 of brain injury litigation, including litigation trends, new
8 theories of liability, emerging defenses, and evolving
9 standards of care?

10 A: I was -- that was a workshop that had several different
11 lecturers. So I was one of the lecturers that had been
12 invited to present at that workshop.

13 Q: Okay. And have you previously been qualified as an
14 expert in neuropsychiatry?

15 A: Yes. In neuropsychiatric imaging.

16 MS. SCRANTOM: No further questions, Your Honor.

17 THE COURT: Any objection?

18 MS. SCRANTOM: Could I ask counsel to restate the field
19 in which she is planning to enter him?

20 THE COURT: She indicated psychiatry and the
21 administration and interpretation of PET scans, if I recall
22 correctly.

23 MS. SCRANTOM: No objection, Your Honor.

24 THE COURT: All right. Without objection, so admitted
25 as such expert.

DR. JOSEPH WU - DIRECT BY MS. VANN

1 MS. VANN: Thank you, Your Honor.

2 THE COURT: You may continue.

3 DIRECT EXAMINATION (RESUMED)

4 BY MS. VANN:

5 Q: Dr. Wu, were you involved in the original trial of this
6 case in any way?

7 A: Yes. I was asked to review a PET scan of Mr. Stephen
8 Stanko at the original trial.

9 Q: What -- did you feel like your role was limited to just
10 reviewing the PET scan?

11 A: That was -- yeah. I was given a specific assignment. I
12 was asked can you interpret this PET scan and tell us if
13 there are any abnormalities, and that was pretty much what
14 they wanted of me, you know, was just to look at the PET scan
15 and to decide if there were any abnormalities. So I had a
16 very limited assignment.

17 Q: Were you looking particularly at one part of the brain
18 over another?

19 A: Well, I looked at the entire brain, but the thing that
20 stood out the most when I reviewed the scan originally was
21 that there was a significant decrease in metabolism in the
22 orbital frontal lobe region.

23 Q: How does your role of being asked to just analyze the
24 PET scan compare to what you're asked to do in a typical
25 capital case you work on?

1 A: Well, this incident -- this was an unusually
2 circumscribed assignment I had in the Stanko case. Normally,
3 in capital mitigation cases, I am asked to interpret a PET
4 scan, but I'm also asked to look at many other informational
5 material and I'm asked to look at -- at other experts'
6 findings and -- and look at a patient's history, and then I'm
7 asked to integrate the information that I've been given in
8 conjunction with the PET scan to offer up some clinical
9 assessment of the diagnoses I believe the individual may
10 have.

11 I was not asked to do that in this case. So this was an
12 unusual case in that regard.

13 Q: And prior to the initial trial, you said you reviewed
14 the PET scan. Did you testify in detail about how that PET
15 scan was administered and your analysis of it?

16 A: Yes.

17 Q: Do you recall how many times you testified at the
18 Georgetown County trial in 2006?

19 A: I would say that I testified twice, I believe.

20 Q: And so I don't need you to go through everything that
21 you testified. I know you testified for a very long time and
22 the judge will have a copy of the record to go through, but
23 could you briefly describe how you go about interpreting a
24 PET scan?

25 A: Well, I would say the primary modality of interpretation

1 is a visual analysis of the scan. And so I draw upon my
2 experience with reviewing thousands of scans in many
3 different conditions and see if there are any abnormal
4 patterns that I observe in the scan based upon my experience
5 in visual analysis. That's the primary modality of
6 assessment.

7 Q: Are there other modalities, such as comparing to a
8 database of other brains?

9 A: Yes. So there other modalities that are available as
10 adjuncts and which can be used, and so this includes doing
11 what we call region of interest analyses where if you suspect
12 that there's a particular area that you believe is abnormal,
13 you can actually measure the metabolism in that region and
14 compare it with a normative database. And then there's --
15 and so yes, so that would be an adjunctive quantitative
16 method of assessing the scans.

17 Q: In Mr. Stanko's case, was there anything unique about
18 the way the PET scan was administered?

19 A: Well, I would say the scan was administered with what we
20 call a continuous performance test. And so most PET scans
21 are not administered with a continuous performance test, and
22 the advantage of administering a scan with a continuous
23 performance test is that this allows one to look at a scan
24 with a productive, like a treadmill stress test for the
25 heart.

1 So, like, if someone suspects that someone has cardiac
2 disease, you can get a resting EKG, but if you want to go
3 further, you can do what we call a treadmill stress test.
4 And it's not uncommon to have patients with cardiac disease
5 who appear to have a normal resting EKG, but when you
6 challenge them with a treadmill stress test where you're
7 having them run and you measure their -- their EKGs, you can
8 unmask latent pathology, which is not present in an
9 unstressed state.

10 And so the CPT test, the continuous performance test
11 task, during the PET scan administration is, in my opinion,
12 comparable to a treadmill stress test for the brain. I
13 believe it's more sensitive at detecting several
14 abnormalities than a resting state scan and, in fact, there
15 are actually articles that have been published which show
16 that a CPT scan is, in fact, more accurate and sensitive at
17 detecting abnormalities than a resting state scan. And so
18 this is something that was done in the Stanko case.

19 Q: And how is -- how is the brain activated for the
20 continuous performance test?

21 A: Well, in a continuous performance test, a patient is
22 shown a screen and asked to respond when a particular stimuli
23 on the screen shows up. For example, you might have a series
24 of numbers show up and then when a zero shows up, you are
25 asked to press a button.

1 Q: And how does that compare to the way a PET scan is
2 normally administered?

3 A: Well, the way that a PET scan is administered in an
4 average PET scan is that it's done with what we call a
5 resting state where you have the patient in a dimly lit room
6 and they're just resting. And so you just administer the
7 sugar while they're resting. That's the typical way that
8 many places do a PET scan.

9 Q: And so when comparing Mr. Stanko's PET scan in this case
10 to other PET scans, you would have to -- would you have to
11 compare apples to apples using all PET scans that are
12 administered through the continuous performance test?

13 A: Yes. If you are going to do a continuance performance
14 test scan, then the appropriate normative database would be a
15 normative database in which normative subjects are doing a
16 continuous performance test scan.

17 It would be inappropriate to compare a patient who is
18 doing a continuous performance test scan with a database in
19 which subjects are not doing a continuous performance test
20 scan. That would be like comparing apples to oranges. That
21 would be an invalid scientific comparison.

22 Q: And when you interpreted Mr. Stanko's PET scan, did you
23 prepare PowerPoint slides that would help you describe your
24 findings?

25 A: Yes, I did.

1 Q: Could you describe to us the findings that you have --
2 that you -- I'm sorry. Your findings that you made at the
3 trial when you initially reviewed Mr. Stanko's PET scans?

4 A: Well, so what I described at the trial was a visual
5 analysis of the scan in which I eyeballed the scan and showed
6 in comparison to a normal control the abnormal decrease in
7 orbital frontal lobe metabolism in Mr. Stanko's case versus
8 that of a typical normal control.

9 Q: And are there slides here that would be helpful to show
10 that?

11 A: Yes. So that if we -- so this is a slide --

12 Q: Can you see this?

13 A: Yes, I can see that. Uh-huh.

14 And so if we're looking here, we are looking at a series
15 of glucose metabolic scans of Mr. Stanko's brain. And the
16 top slices indicate slices that are near the bottom of his
17 brain and the bottom slices indicate slices that are near the
18 top of his brain.

19 And you will see that it's color-coded where you will
20 see, for example, red, green, and yellow. And red indicates
21 higher levels of metabolism and yellow is lower than red and
22 then green is lower than yellow and blue is lowest of all.

23 And so this would be a series of scans, and Mr. Stanko's
24 PET scan image in the top row, if you're looking at first and
25 second column and you're looking near the top of that scan,

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1 if you were to impose an imaginary clock face on top of the
2 brain, the area that would be near twelve o'clock, say
3 between eleven o'clock and one o'clock, that would be the
4 area in row one, columns one and two, that would have the
5 orbital frontal cortex. And this part of the brain is
6 abnormally low in Mr. Stanko compared to normal controls.

7 And if we move on to the next slide? So let's see.

8 So this is a blow-up of the brain and you can see what a
9 typical normal control subject looks like on the right-hand
10 side and you'll see Mr. Stanko's brain on the left-hand side,
11 and you'll see that if you look at the area of the brain
12 from, say, eleven o'clock to one o'clock, you know, again,
13 you are imagining a superimposed clock face on top of the
14 brain, you will see that there's a lot more red in the
15 orbital frontal cortex of the brain than, say, Mr. Stanko
16 where you see that there's a lot more green in that area of
17 the brain. And so this is an example of what we call
18 decreased metabolism in the orbital frontal cortex.

19 And if we could move on to the next slide, please?

20 And if you look here, this is a three-dimensionally
21 rendered view of the brain in which we take the slices of the
22 PET scan and digitally stack them up and then reconstruct
23 them in three dimensions. And here, we are looking at the
24 brain from the front view and, again, we have the normal
25 control on the right-hand side and Mr. Stanko's brain on the

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1 left-hand side.

2 And is there any -- like, a laser pointer that I could
3 use to point to specific parts of the slide?

4 MS. VANN: I don't believe so, but do you mind if he
5 comes down?

6 THE COURT: You can step down if you'd like.

7 THE WITNESS: I think that would be helpful for me to
8 point out specifics.

9 THE COURT: Okay.

10 (WHEREUPON, the witness exited the witness stand.)

11 THE COURT: If you would stand, Doctor, to the right of
12 that screen so when you talk, you are talking back this way
13 so my court reporter can clearly hear you. Okay?

14 THE WITNESS: By the right side, you mean this side as I
15 face it?

16 THE COURT: So that side where you're facing back this
17 way.

18 THE WITNESS: Okay.

19 THE COURT: And, Ms. Vann, if you need to move around --

20 MS. VANN: Okay.

21 THE COURT: -- so you can see what he's pointing to --

22 MS. VANN: Okay.

23 THE COURT: -- feel free to do so.

24 BY MS. VANN:

25 A: Okay. And so if you look at the normal control average

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1 here and you look at the base of the frontal lobe of the
2 brain, you will see that there's a lot of red here near the
3 base of his brain. This is the part of the brain called the
4 orbital frontal cortex right above the eyeball region of the
5 brain.

6 And if you look at Mr. Stanko's brain here right at the
7 base of the brain, you will see that the base of his brain
8 doesn't show this kind of red area here at the base of his
9 brain, and so this is an abnormal scan. It's abnormally low
10 and it's a kind of injury that I see in individuals who have
11 sustained, for example, a traumatic brain injury.

12 The base of the brain here, the orbital frontal lobe,
13 sits on a part of the skull which is kind of rough. They
14 call it a tribital [ph] form plate.

15 And so if you have an individual who has sustained a
16 traumatic brain injury, say by being clobbered in the back of
17 the head with a beer bottle, that would cause the base of the
18 brain to get abraded on this rough surface and it would cause
19 damage to the base of the orbital frontal lobe areas here
20 that would cause a decrease in metabolism.

21 Now, the orbital frontal lobe is a very important part
22 of the brain because it's the part of the brain that is
23 involved with regulation of impulse control and regulation of
24 aggression and personality. And so individuals who have
25 sustained damage to the orbital frontal lobe areas of the

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1 brain have changes in personality due to a neurological
2 injury or damage.

3 And -- and so I think in the trial I discussed a famous
4 case of a railroad worker named Phineas Gage. During -- when
5 they were building the transcontinental railroad, one of the
6 jobs that they had to do was they had to tap explosives, and
7 Phineas Gage was a foreman, I believe. He was tapping
8 explosives, which was with a tapping rod, and when he was
9 tapping the explosive with the tapping rod, the explosive
10 went off prematurely and sent the tapping rod through the
11 orbital frontal cortex of his brain. Now, amazingly, he
12 survived, but he became a changed personality, whereas prior
13 to the injury, he was a very conscientious individual and
14 very respectful and responsible.

15 THE COURT: Doctor?

16 THE WITNESS: After --

17 THE COURT: Doctor, turn this way as you're talking.

18 THE WITNESS: Okay.

19 BY MS. VANN:

20 A: And after injury to the orbital frontal portion of his
21 brain, he became impulsive, aggressive, you know,
22 inconsiderate, and uncaring.

23 And so -- and so this was actually one of the cases that
24 helped to start the field of neuropsychiatry that helped to
25 definitively show that parts of the brain are intimately

1 involved with the regulation -- proper regulation of
2 personality and impulse control.

3 And this is the area of the brain that we see an
4 abnormal decrease in Mr. Stanko.

5 Q: Do you have an opinion on how far below normal Mr.
6 Stanko's orbital frontal lobe is functioning?

7 A: Well, let's see. I actually measured this and I think
8 it's in one of the other slides. So if we could move on to
9 one of the other slides?

10 This is another view here of the decrease in the back of
11 the brain here and then this is a person of the back of the
12 brain. So this is the front view and this is the back view.
13 And so we can see that it seems like there's especially a
14 little decrease in the bottom front, but not that much in the
15 back.

16 And so here when I actually measured this area of the
17 brain here -- if we move on to the next slide, please?

18 Q: And before you get too far, had you done this
19 quantitative analysis at the time of trial?

20 A: No. At the time of trial, I was just doing a visual
21 analysis. I wasn't actually measuring the metabolism. It
22 was just based on an eyeball examination.

23 But I have subsequently gone back and actually measured
24 that and compared it with a normal control group, and it's
25 during a continuous performance task, which would be the

1 appropriate normal test control group.

2 And so I calculated the normal control average, the
3 normal control standard deviation, and he is more than two
4 standard deviations below the norm, and that would be the
5 typical threshold that we use to find abnormal. And so this
6 is something that shows that he is about 25 percent below the
7 normal in this area, and that is something that occurs in
8 maybe 3 out of 100 individuals in a normal population.

9 And so this is something that -- and so the normal
10 cutoff for most medical tests is the five percent threshold,
11 something that occurs in five percent of the population. As
12 a doctor, kind of like on a blood count test or something,
13 you would say that is clinically worrisome.

14 And so he -- and so, in fact, his quantitative analysis
15 I did or the visual analysis that I did, that there is, in
16 fact, an abnormal decrease of orbital frontal metabolism in
17 Mr. Stanko.

18 Q: And is that an analysis you could have done in 2006 if
19 someone had asked you to do so?

20 A: If someone had asked me to do a quantitative analysis of
21 the brain, the regions, I could have done this at that time,
22 but I -- you know, there seemed to -- you know, there was no
23 real interest in going further.

24 Q: Thank you, Dr. Wu. I think this is the last Powerpoint.
25 So if you wanted to return --

1 A: Okay.

2 Q: -- to the witness stand.

3 A: Okay.

4 (WHEREUPON, the witness returned to the stand.)

5 Q: Now, all of the information that we've discussed, is
6 that focusing on the frontal lobe of the brain?

7 A: Yes.

8 Q: Since you have been contacted to prepare for this
9 hearing, did you conduct any additional analysis to other
10 areas of the brain?

11 A: Yes. So I was provided testimonies by you of Dr. Gur,
12 and -- and whose testimony I had not previously been
13 acquainted with in great detail.

14 And -- and in reviewing Dr. Reuben Gur's testimony, he
15 noted that there were abnormalities in the left frontal lobe
16 on an MRI quantitative volumetrics that were two standard
17 deviations, I believe, below the norm, but he also noted,
18 even more strikingly, that there were abnormalities in the
19 right medial limbic cortical areas in structures such as the
20 hippocampus and the amygdala, which were four standard
21 deviation below the norm. So something that occur like maybe
22 in one out of a thousand individuals.

23 And so -- and so that information that I learned from
24 reviewing the testimony of Dr. Gur led me to look more
25 carefully at the right limbic structures of the brain in

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1 terms of metabolism and -- and when doing a more fine-grained
2 analysis that was based -- you know, generated by the impetus
3 of reading Dr. Gur's report, I found, in fact, that there
4 were abnormalities in terms of the right temporal insular
5 cortical metabolism, and I think that we have a slide that
6 shows that.

7 And so -- let's see. It's hard for me to see the
8 figures from here, but --

9 Q: Okay. So --

10 THE COURT: You can step down --

11 THE WITNESS: Okay.

12 THE COURT: -- if you need to.

13 MS. VANN: I sent you back too soon. I'm sorry.

14 (WHEREUPON, the witness exited the witness stand.)

15 BY MS. VANN:

16 A: Now, the first thing I should point out is that the
17 images of what we call radiographic orientation, which means
18 that the right side of the person is actually on the left
19 side of the image and the left side of the person is actually
20 on the right side of the image. So this, even though it's on
21 the left side of the image, is actually the right side of Mr.
22 Stanko.

23 And --

24 MS. SCRANTOM: Your Honor, if I may ask the doctor to
25 direct his testimony at you, the fact finder, and not what's

1 behind me.

2 THE COURT: Yeah.

3 MS. SCRANTOM: Thank you.

4 THE COURT: No, you're fine. Stand there. Just talk
5 towards this way.

6 THE WITNESS: Oh, I'm sorry. I'm sorry.

7 BY MS. VANN:

8 A: Okay. And so -- and so when we compare the metabolic
9 rate in normal controls doing the CPT task in this -- of this
10 part of the temporal insular cortex, the metabolic rate is
11 1.09 and the standard deviation is .06.

12 Now, Mr. Stanko has a value of 1.32, which is almost
13 four standard deviations above the norm. So this is
14 something that would occur in 3.5 out of -- let's see -- I
15 would say 10,000 individuals.

16 And so -- so this is an abnormal increase in metabolism
17 in the right temporal cortex, which is the same side that Dr.
18 Gur found an abnormal decrease of four standard deviations in
19 terms of the measurement of the quantitative volumetric of
20 the right medial cortical structures and limbic structures,
21 such as hippocampus and amygdala.

22 And so this is a remarkable overlap, but not surprising
23 because I believe that both of these can be explained by a
24 particular phenomena, which is, I believe, an undiagnosed
25 temporal lobe epilepsy. Temporal lobe epilepsy is known to

1 cause atrophy or shrinkage of tissues in the brain due to
2 what we call excitotoxicity.

3 During a seizure, we have an abnormality of excitation
4 of the brain, and this can cause the release of -- too much
5 excitation can actually damage the brain and cause atrophy or
6 shrinkage. And that would explain why Dr. Gur found a four
7 standard deviation decrease in structures such as the
8 hippocampus and amygdala on the right side, and it would be
9 consistent with the abnormal increase in metabolism because
10 during a non-convulsive seizure, you are going to have an
11 abnormal firing or abnormal increase in sugar metabolism, and
12 this is almost four standard deviations, 3.5 standard
13 deviations. If you round it up, it would be about four, but
14 -- and so -- and so both of these kind of fit hand in glove
15 with the diagnosis of temporal lobe epilepsy.

16 Now, Mr. Stanko also has a history of hypergraphia.
17 Now, hypergraphia is a phenomena in which individuals --

18 MS. SCRANTOM: Your Honor, I would object at this point.
19 I'm not sure that Dr. Wu has laid a foundation of records he
20 reviewed that would have anything to do with hypergraphia to,
21 therefore, be able to testify about it.

22 MS. VANN: I have the record that I was going to discuss
23 with him. I think we just moved ahead of my question. So
24 I'm happy to pose that question now.

25 THE COURT: Go ahead.

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1 BY MS. VANN:

2 Q: Are we finished with the slide?

3 A: Yes, we are.

4 Q: Okay. So if you want to return to the witness stand.

5 A: Sure.

6 (WHEREUPON, the witness returned to the stand.)

7 Q: I'm handing you a document that has previously been
8 admitted as Applicant's Exhibit 23. Did you receive -- could
9 you take a look at that document that I just handed you?

10 A: Yes. This was a document that you had provided to me,
11 which I reviewed, by a Dale Davis in which she discussed the
12 observation of hypergraphia in Mr. Stephen Stanko.

13 Q: And did she provide information that was the basis of
14 that?

15 A: Yes. And so she indicated that -- that he wrote
16 excessively, much more so than normal, and that -- and that
17 when she inquired about this or he inquired about this that
18 he described that it was almost that -- that he could not
19 stop writing so much. That -- that it helped him to relieve
20 anger and was a compulsion, according to the memo in which
21 she documented his answers.

22 And then she noted that it is associated with temporal
23 lobe epilepsy, which I independently verified, and -- and
24 there is, in fact, a well-documented history in the field of
25 neuropsychiatry of individuals with temporal lobe epilepsy

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1 having hypergraphia, and this is a phenomena that was first
2 noted in the 1970s in the field of neuropsychiatry and it is
3 something that was subsequently verified and confirmed by
4 other neuropsychiatrists who noted that individuals who
5 scored high on the psychosocial seizure inventory also tended
6 to write verbosely to a survey with an average of 1,300 words
7 in response to a survey, compared to 106 words for
8 individuals who did not scores high on this psychosocial
9 seizure index inventory, which is associated -- correlated
10 with temporal lobe epilepsy and that -- and so -- and so this
11 is a very striking clinical observation that I think fits
12 with Mr. Stanko's case.

13 That besides the four standard deviation decrease in
14 quantitative volumetric on the right side of his brain and
15 the hippocampus and amygdala, which would be consistent with
16 atrophy due to a temporal lobe epilepsy on the right side,
17 and an abnormal increased metabolism in that same region of
18 almost four standard deviations and with this phenomena of
19 hypergraphia, all three of these elements, I think, tie
20 together and I believe fit with a working diagnosis in my
21 mind that Mr. Stanko has -- had undiagnosed temporal lobe
22 epilepsy.

23 Q: And is this a conclusion that you could have come to in
24 2006?

25 A: Yes. If I had been provided the information by Dr. Gur

1 that there was a four standard deviation decrease in the
2 quantitative volumetric on the right side of the brain, I
3 would have been inspired at that time to take a closer look
4 at the metabolism on the right side and it was a region of
5 interest analysis, which I could have done back at that time,
6 but because the primary focus was on the frontal lobe and
7 there was really -- it was very circumscribed what they
8 wanted me to do and I wasn't given this type of information
9 that could serve as impetus to examine the data in greater
10 detail, I did not pursue that line of inquiry.

11 Q: Thank you. And just to summarize, we are talking about
12 basically two different abnormalities, the frontal lobe
13 decrease in metabolism?

14 A: Yes.

15 Q: And this issue on the right side of the brain that you
16 believe means that he has undiagnosed temporal lobe epilepsy?

17 A: Yes.

18 Q: Okay. And at trial, you testified about the actual
19 damage to the frontal lobe; correct?

20 A: Yes.

21 Q: And have you reviewed your testimony from the Georgetown
22 County trial?

23 A: Yes.

24 Q: I'm handing you Volume 4 of the trial transcript and I
25 would direct you to page 1671 and 1672, and I believe Mr.

1 Diggs starts asking you a question about the functional
2 terms?

3 A: Yes.

4 Q: Could you just review and summarize what Mr. Diggs --
5 actually, could you read into the record what Mr. Diggs asked
6 you?

7 A: Let's see here. So he was asking -- we were talking
8 about the frontal lobe and he basically asked, well, what
9 does this mean in functional terms, damage to the frontal
10 lobe, and -- let's see.

11 And so the answer was, well, in functional terms, the
12 frontal lobe is involved with things such as -- and then I'll
13 skip down to -- it is a very important part of the brain for
14 helping to regulate impulses and for exercising proper
15 judgment.

16 And then I discussed the famous study of Vietnam vets
17 who suffered from head injuries and as you look at a large
18 number of Vietnam vets who suffered head injuries and compare
19 those vets who had frontal lobe injuries with those vets who
20 had the same size injury but in other parts of the brain, not
21 the frontal lobe, that the ones who had frontal lobe injuries
22 were anywhere from 2 to 6 times more violent or aggressive
23 than the vets who had the same size injury in, say, other
24 areas of the brain, such as the occipital lobe.

25 And then I discussed, for example, stroke patients and

1 that if you have a stroke in the frontal lobe area, the
2 closer you get toward the frontal lobe, the more aggressive
3 the stroke patients are known to be.

4 And so I pointed out that there is ample literature that
5 the frontal lobe is very important in the regulation of
6 aggression. When there's damage to it, you have impaired
7 ability to regulate aggression.

8 Q: And after you gave that description, what was Mr.
9 Diggs's next question?

10 A: Let's see. Then he said -- he was asking me to start
11 the video again.

12 Q: And that was the video that you were going through the
13 different regions of Mr. Stanko's brain?

14 A: Yes.

15 Q: And describing it?

16 A: Yes.

17 Q: From having reviewed your testimony, did Mr. Diggs ask
18 you any questions specifically about Mr. Stanko's functioning
19 as a result of his brain abnormality?

20 A: He does not appear to have asked me questions about Mr.
21 Stanko in particular. He was asking more general questions
22 and, of course, I wasn't really given any additional
23 information about Mr. Stanko; so I wouldn't have been able to
24 answer any special questions because really the only piece of
25 information I had on Mr. Stanko was the PET scan.

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1 Q: And did you prepare a report in advance of trial in this
2 case?

3 A: Yes.

4 MS. VANN: May I approach, Your Honor?

5 THE COURT: Yes, ma'am.

6 BY MS. VANN:

7 Q: Is this the report that you prepared for Mr. Diggs?

8 A: Yes. This is the report that I had prepared for Mr.
9 Diggs.

10 Q: And you gave this to him in advance of trial?

11 A: Yes. And in there, I indicated that clinical
12 correlation is recommended and that clinical records could be
13 forwarded to me for further differential diagnostic
14 consideration, and that was never done.

15 Q: And what did you mean by clinical correlation is
16 recommended?

17 A: Well, that typically what I do in most civil and most
18 criminal mitigation cases is that when I do the scan, I am
19 provided with many records of the individuals, clinical and
20 neuropsychological evaluations.

21 So I'm given neuropsychological testing records. I'm
22 given depositions about how the patient is doing. I'm given
23 collateral interviews by informants, like family members or
24 teachers or employers, about how an individual was before and
25 after an injury. I'm given other medical testing

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1 information, like quantitative volumetrics. So that is sort
2 of the norm is for me to correlate those other informations
3 and try and tie all these pieces in together with a PET scan.

4 Q: And were you given the clinical records that you
5 requested be forwarded to you?

6 A: No. I never received any other records. The only thing
7 I received was the PET scan.

8 MS. VANN: Your Honor, at this time, I'd move to have
9 this admitted as Applicant's Exhibit 27.

10 THE COURT: Any objection?

11 MS. SCRANTOM: No objection.

12 THE COURT: Without objection, it's admitted.

13 (WHEREUPON, Plaintiff's Exhibit Number 27, report of Dr.
14 Wu, was admitted into evidence.)

15 BY MS. VANN:

16 Q: And in preparation for this hearing, did you review any
17 additional records?

18 A: Well, yes. I reviewed my own testimony. I reviewed Dr.
19 Sachy's testimony, which is the first time I've had a chance
20 to actually review his testimony. And I reviewed Dr. Gur's
21 testimony. I re-reviewed Spicer's testimony and -- and then
22 I reviewed some other -- like, the memo that you provided
23 about hypergraphia.

24 And then you sent me some other records, the birth
25 records of Mr. Stanko, the mother's birth records, the --

1 some prison records, some psychological counseling records.

2 So I had a chance to review those other records.

3 Q: Did I -- you may have mentioned this. Did I also send
4 you his school records?

5 A: Yes. And the school records as well. That's correct.

6 Q: And did I send you his Probation and Parole records?

7 A: Yes, you did.

8 Q: And did you review all of those in advance of --

9 A: I did.

10 Q: Are those the types of clinical records that you had
11 requested from trial counsel?

12 A: Yes. Those are the kind of clinical records I had
13 requested from trial counsel, which I never received, and
14 there was some very important information, especially in Dr.
15 Sachy's testimony, which I found extremely helpful. It
16 helped me to try and conceptualize the case.

17 Q: Can you describe that?

18 A: Yes. So one of the things that Dr. Sachy testified
19 about was that Mr. Stanko indicated that he was under extreme
20 stress immediately prior to the murder of Mrs. Ling and the
21 attempted murder of her daughter, and that he was thinking of
22 moving out and that she had threatened to expose him as a
23 child molester if he moved out. And then she apparently
24 struck him and a cigarette or something flew into his eye or
25 something like that, and then it appears that he doesn't have

1 much recollection thereafter.

2 Now, when he was talking to Dr. Sachy, he doesn't recall
3 much, but then Dr. Sachy reviewed a report by another -- I
4 guess a psychiatrist who indicated that he does recall that
5 he was covered with blood and that he went into the shower,
6 you know, but it seemed like there was a gap in his memory
7 after this confrontation and then being struck by Mrs. Ling.

8 And I thought that this was very important in terms of
9 my understanding of the case because one of the things I have
10 observed in individuals who have temporal lobe epilepsy is
11 that when the individual has some kind of seizure disorder,
12 it's under extreme stress that this can trigger a psychotic
13 aggressive episode that they have very little memory of.

14 That their memory or recollection is -- if they have it,
15 is very hazy and -- and they can do sometimes bizarre heinous
16 things during this state that they really don't have no plan
17 or intention of doing, but -- and it appears that -- and
18 there is some medical literature to back this up that
19 individuals with non-convulsive seizure disorders when
20 stressed can act out in a very aggressive psychotic manner
21 that their -- that their recollection of can be hazy. And
22 this seemed to fit the situation that I -- and I learned this
23 for the first time actually when I was reading Dr. Sachy's
24 testimony, just in the last week or so.

25 You know, I had no real information about what Mr.

1 Stanko recalled or didn't recall of the murder of Ms. Ling
2 and the attempted murder of her daughter, you know, and so
3 this was the first time I was aware that he was under this
4 kind of stress where he was being threatened with being
5 exposed as a child molester and then he was actually
6 apparently struck by Ms. Ling.

7 But that's the kind of stress I've seen in other cases
8 where people can act out in a psychotically aggressive manner
9 and do some heinous thing, and I believe that what happens is
10 that an individual who has a non-convulsive seizure disorder,
11 like temporal epilepsy, when they are under stress it can
12 cause kind of like an electrical storm in the brain in the
13 aggression center and it can cause an individual to act out
14 in a very violent, irrational manner, and it can disrupt the
15 memory consolidation as well.

16 And I believe based on what I've recently learned from
17 Dr. Sachy's testimony that this seems to fit with other cases
18 I have observed of this kind of phenomena.

19 Q: And so that is associated with the temporal lobe
20 epilepsy then?

21 A: Yes. And so that would fit in with the four standard
22 deviation decrease in the right medial cortical volumetrics
23 that Dr. Gur had. That would fit in with the three and a
24 half standard deviation increase in metabolism in the right
25 temporal lobe area that I observed upon further fine-grained

1 analysis in the region of interest with the PET scan. That
2 would fit in with the history of hypergraphia that Mr. Stanko
3 has, and that would fit in with the literature I have
4 reviewed of individuals who can act out in a psychotically
5 aggressive manner.

6 And so all these pieces seem to come together and so
7 this seems to provide more of a neurological explanation for
8 what happened as opposed to, I think, Dr. Sachy's sort of
9 emphasis on Mr. Stanko as having an extreme case of
10 antisocial personality disorder, like Ted Bundy or Gacy,
11 which I have serious misgivings about, but I was never asked,
12 you know, what did I think about this working diagnosis. You
13 know, I was -- I was given a very circumspect role: analyze
14 the PET scan, talk about the PET scan, you know, and even
15 though I asked for records and asked to do this, I was not
16 provided any of this information.

17 Q: And if we could go back to the frontal lobe abnormality,
18 you described there's a decrease in the metabolism in the
19 frontal lobe?

20 A: Yes.

21 Q: What -- and you I think described this briefly at trial.
22 What are the behavioral or functional results of that?

23 A: Well, behavioral consequences of a frontal lobe injury,
24 especially in the orbital frontal lobe area, is a greater
25 difficulty with regulating impulses, a greater tendency to

1 act out aggressively, especially when provoked or stressed, a
2 greater tendency to be -- to not think about the
3 consequences. And so these are -- and then it can cause a
4 change in personality where an individual can appear to be
5 less conscientious, less empathetic.

6 Q: And in the records that you reviewed, did you see any
7 evidence of this playing out in Mr. Stanko's life?

8 A: Well, I would say that, you know, certainly there were
9 times when Mr. Stanko appeared to have some problems with
10 impulse regulation and aggressive -- aggression regulation,
11 you know, but I would say that prior to the murder of Ms.
12 Ling and the attempted murder, he had never seemed to
13 escalate to the point of actually murdering people, but he
14 certainly had some kind of behavioral traits associated with
15 a frontal lobe -- orbital frontal lobe injury.

16 And it can look like an antisocial personality disorder
17 in many ways, but that would actually be, in my medical
18 opinion, an inaccurate diagnosis because the DSM-V -- part of
19 the criteria diagnostically for making a determination that
20 somebody has antisocial personality disorder is that there is
21 no medical condition that can be causative, you know, and
22 they specifically mention such as traumatic brain injury in
23 the DSM-V.

24 Otherwise, if an individual has a medical condition,
25 such as traumatic brain injury, that can cause these type

1 behaviors, it's not considered antisocial personality
2 disorder. It's actually considered a personality disorder
3 secondary to a mental condition, which has a much less
4 pejorative connotation, I think, and a much less scary
5 connotation for many people, even though the behavior may
6 look very similar. But I think that there is a big
7 difference between someone who is a born antisocial and
8 someone who develops some traits like that secondary to a
9 traumatic brain injury.

10 Q: And in his earlier life, did you see records that had to
11 do with him maybe scamming people or telling falsehoods to
12 get money?

13 A: Yes. Yes, I did. So that would certainly be consistent
14 with someone who has those kinds of traits, but again, the
15 key issue is is this something that cannot be explained by a
16 medical condition. In -- in that case, it would be accurate
17 to say it's antisocial personality, but from what I saw, it
18 seemed like people do not really factor that important
19 diagnostic criteria in their, you know, clinical
20 determination. And so in my opinion, this was an inaccurate
21 medical diagnosis.

22 Q: And do you think any of those problems that he was
23 having that he went to prison for the first time could have
24 been the result of the frontal lobe abnormality?

25 A: Yes. I believe that that could very well have been

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1 associated with a frontal lobe injury to the orbital frontal
2 lobe causing problems with impulse and aggression and a
3 certain -- maybe a lack of empathy in some cases.

4 Q: And do you have an opinion regarding the origin of Mr.
5 Stanko's frontal lobe abnormality?

6 A: Well, in reviewing the records that I received, it
7 appeared that there were two possible causes. One of them
8 was that he had a complicated birth and that he -- that there
9 were serious concerns about whether he would even actually
10 survive.

11 His mother was actually scheduled for a tubal ligation,
12 I believe, and because of the precarious nature of his birth,
13 the doctor who was doing the delivery and who was supposed to
14 do the tubal ligation explicitly decided to not do the tubal
15 ligation because he wasn't even sure if Stanko would survive
16 and thought that he didn't want to sterilize a woman whose
17 baby might not survive because she might want to have another
18 child. And -- and there was some question about whether or
19 not he had an intracranial hemorrhage at the time of his
20 birth and -- and maybe some -- and so that was certainly one
21 possible etiology of brain abnormalities.

22 The second is that, I believe, that when he was in high
23 school, maybe 16 or 17, something like that, he was with some
24 friends and there was a woman who was being -- I don't know
25 -- abused by her boyfriend, and Steven and his friends

1 attempted to intervene. I believe, from what I recall, that
2 as part of that intervention, he was clobbered in the back of
3 the head with a full beer bottle and that he started to talk
4 gibberish and that he seemed to be out of it.

5 And so, you know, that certainly sounds like the kind of
6 thing that would be a traumatic brain injury and that would
7 certainly be the kind of thing that can cause orbital frontal
8 lobe, especially when you get clobbered in the back of the
9 head with a full beer bottle, and then the kind of injury
10 that we see with people we call a contrecoup injury where the
11 impact is on the back of the head, but the damage is on the
12 opposite side of the head at the bottom front.

13 And so that would certainly be a very notable injury in
14 his history that I think could explain the orbital frontal
15 abnormality and could also explain the temporal lobe epilepsy
16 because it is not uncommon to develop temporal lobe epilepsy
17 or seizure disorders as a consequence at a later stage of
18 having had an earlier traumatic brain injury. It is a well-
19 known neurological sequelae that seizures and temporal lobe
20 epilepsy are increased in individuals who have had a previous
21 history of traumatic brain injury.

22 Q: Are these brain abnormalities something that he himself
23 caused?

24 A: No. I don't believe that he himself caused this orbital
25 frontal lobe decrease or that he caused this right medial

1 temporal insular metabolic increase or that he caused the
2 right medial cortical quantitative volumetric atrophy or that
3 he caused himself to develop hypergraphia. I think that
4 these are all neurological consequences of having had some
5 type of brain damage.

6 Q: And all of these brain abnormalities that you've
7 described, is this something that could be treated?

8 A: Well, certainly temporal epilepsy is treatable with
9 anticonvulsants and -- and so, you know, you can reduce the
10 likelihood that if someone who has a temporal lobe epilepsy
11 and they are on an anticonvulsant, if they were stressed,
12 that they would have a psychotic aggressive episode. That
13 would certainly be much less reduced if they were on an
14 anticonvulsant.

15 Q: And the behavior issues that come with the decreased
16 metabolism in the frontal lobe, are those things that could
17 be treated or --

18 A: I believe that there are various treatments that can be
19 attempted or tried for these things, but, you know, if
20 there's -- some of these things are not mainstream, you know,
21 things like hyperbaric oxygen therapy. You know, there's
22 some literature that indicates that it can help people with
23 brain injury. There's a study published, I think, from
24 Israel looking at a number of brain injury individuals who
25 had a course of hyperbaric oxygen therapy.

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1 So I think that there are things that can be tried, you
2 know, but they're not mainstream in America.

3 Q: Could there be therapy or anything that would help with
4 controlling the behaviors, especially if you are aware of
5 that issue?

6 A: Certainly. I think that many brain injury individuals
7 go through some kind of cognitive rehab and some kind of
8 rehabilitation where they learn to develop coping strategies
9 and where they are educated about the nature of the brain
10 injury and how that may affect their behavior and how they
11 can try and take preventative steps to try and mitigate some
12 of the likelihood of, you know, acting out with a brain
13 injury.

14 Q: And I believe you've touched on this, but do you recall
15 anyone at the time of trial referring to Mr. Stanko as a
16 psychopath?

17 A: Yes. I remember that Dr. Sachy seemed to be -- that was
18 his working diagnosis. It was that Mr. Stanko was a
19 psychopath like Ted Bundy or Gacy, and I -- I remember I had
20 serious misgiving about both the medical accuracy of his
21 diagnosis, as well as, you know, I just didn't think it was
22 an accurate diagnosis.

23 But, you know, I was never really asked my opinion about
24 the diagnosis. I was just asked really to assess the PET
25 scan.

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1 Q: And why is it that you don't think it's an accurate
2 diagnosis?

3 A: Well, I think, you know, a psychopath as basically an
4 antisocial personality disorder presumes that there is no
5 medical condition that causes this, you know, and I believe
6 that there are medical conditions. I think traumatic brain
7 injury, temporal lobe epilepsy.

8 And so I don't think that it would be really accurate to
9 say that he is an antisocial personality disorder or a
10 psychopath. I think they were sort of using the terms
11 interchangeably, and I just didn't think it was something
12 that was accurate.

13 Q: Did you have any concerns about the use of the term
14 psychopath to describe a capital defendant?

15 A: Well, not only did I think it was medically I think
16 inaccurate, but I also thought from a legal strategic point
17 of view that to say that Mr. --

18 MS. SCRANTOM: Objection, Your Honor. This would be
19 outside the scope of his expertise.

20 THE COURT: Objection sustained.

21 BY MS. VANN:

22 Q: In your work -- I'll move on.

23 You also reviewed some records from Mr. Stanko's prison
24 time; is that correct?

25 A: Yes.

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1 Q: And do you think that someone with a brain abnormality
2 such as Mr. Stanko would be able to function better in a
3 structured prison setting?

4 MS. SCRANTOM: Objection. I believe this is also
5 outside the scope of his expertise.

6 THE COURT: I'm going to allow this. Go ahead.

7 MS. VANN: Thank you, Your Honor.

8 BY MS. VANN:

9 A: I believe it's well known that individuals with brain
10 injuries do better in structured environments. The
11 structured environment acts kind of like an external frontal
12 cortex. It helps to organize their world. It helps to
13 regularize things. There are -- is a certain routine and a
14 predictability that an external structured environment
15 provides, which allows people with brain injuries to actually
16 do better than when they are in an unstructured everyday
17 setting where there is unpredictability and where there are
18 unpredictable stresses.

19 MS. VANN: Court's indulgence, Your Honor.

20 THE COURT: Yes.

21 BY MS. VANN:

22 Q: Dr. Wu, were you here for earlier testimony from Mr.
23 Stanko's brother, Jeff?

24 A: Yes.

25 Q: Did you hear him describe that Mr. Stanko was a catcher

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1 and was possibly hit in the head with a baseball?

2 A: You know, I think I came in after that testimony; so I
3 don't really recall --

4 Q: Okay.

5 A: -- any of that specific part.

6 Q: If somebody was hit in the head with a baseball as a
7 catcher, could that have some effect on the brain damage that
8 you've seen in this case?

9 A: Certainly. I see all kinds of athletes who have
10 sustained traumatic brain injuries from athletic incidents of
11 this type.

12 MS. VANN: Thank you, Your Honor. I have no further
13 questions.

14 THE COURT: Cross-examination.

15 MS. SCRANTOM: May it please the Court, Your Honor.

16 THE COURT: Yes, ma'am.

17 CROSS-EXAMINATION

18 BY MS. SCRANTOM:

19 Q: Dr. Wu, Mr. Stanko was originally tried in August of
20 2006; is that correct?

21 A: Yes.

22 Q: And that's when you gave your first testimony in this
23 case?

24 A: Yes.

25 Q: And the DSM-V was not published until after that; right?

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1 A: That's correct. I believe the DSM-IV was in operation
2 at that time.

3 Q: ' So the DSM-IV would've been the text that the doctors
4 would have relied on who were consulted in Mr. Stanko's case?

5 A: Yes.

6 Q: Not the DSM-V?

7 A: I don't believe there's a substantial difference between
8 DSM-IV and DSM-V with this particular diagnosis.

9 Q: Okay. Dr. Wu, did you ever look at the testimony of the
10 -- the younger victim in the Georgetown County case when you
11 were preparing for your testimony today?

12 A: I -- I did not read her testimony.

13 Q: So is it fair to say that the factual recitation of what
14 occurred that you have reviewed for today came through other
15 doctors' testimony only?

16 A: It came from my reading Dr. Sachy's testimony.

17 Q: And that would be secondhand information; is that
18 correct?

19 A: That's correct.

20 Q: Do you disagree at all that Mr. Stanko has a personality
21 disorder?

22 A: No. I don't disagree with the fact he has a personality
23 disorder. I believe I disagree with whether it's an
24 antisocial versus a personality disorder secondary to medical
25 condition.

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1 Q: Okay. So personality disorder secondary to medical
2 condition?

3 A: Yes.

4 Q: That's where you're trying to go today; correct?

5 A: That's -- that's my belief. Correct.

6 Q: And your practice in doing PET scans assists you in
7 finding a medical diagnosis that may be associated with a
8 personality disorder; is that correct?

9 A: Well, I would say the PET scan allows me to obtain
10 objective imaging evidence that could be consistent with
11 alternative medical explanations other than, you know, some
12 born psychopath.

13 Q: Okay. So a PET scan helps you, but it's not, in and of
14 itself, a diagnostic test, is it?

15 A: No, it's not. I would say it's like a thermometer for
16 pneumonia. If you suspect someone has pneumonia, you could
17 check their temperature with a thermometer and, if their
18 temperature is elevated, you would say that that would
19 increase the likelihood in your opinion that they have
20 pneumonia, but you wouldn't make a diagnosis of pneumonia
21 from an elevated temperature by itself and not any other
22 information.

23 Q: So you would not make the diagnosis? You would just
24 find some type of abnormality in the brain; is that correct?

25 A: Can you restate the question again?

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1 Q: So the PET scan would not help you come up with a
2 diagnosis in and of itself? It just indicates that an
3 abnormality may exist in the brain?

4 A: That -- that an abnormality exists in the brain and then
5 one can look at what we call differential diagnostic list of
6 considerations.

7 Q: Okay. And in 2006 when you were retained to work on
8 this case, you looked at the PET scan of the entire brain; is
9 that correct?

10 A: Yes.

11 Q: And for today, you looked at the PET scan of the entire
12 brain; is that correct?

13 A: Yes.

14 Q: Okay. And I noticed that you've been -- you were
15 talking in present tense today during your earlier testimony.
16 So you don't disagree that there is an abnormality in Mr.
17 Stanko's brain?

18 A: No, I don't disagree that there's an abnormality in his
19 brain. That's correct.

20 Q: And would you consider the diagnosis of the abnormality
21 as a medical diagnosis?

22 A: Yeah. My working -- my working diagnosis, based on what
23 I've learned so far, is I believe he has had an imaging
24 that's consistent with a traumatic brain injury and
25 consistent with temporal lobe epilepsy.

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1 Q: And so in order to have a full diagnosis of a
2 personality disorder plus a medical condition, a battery of
3 tests would need to be conducted on Mr. Stanko; is that
4 correct?

5 A: I mean I would say that I'm not sure what battery of
6 tests you're referring to.

7 Q: Would you expect there to have been neuropsychological
8 testing done on Mr. Stanko?

9 A: From what I recall, there was neuropsychological testing
10 done on him, and it was normal from what I recall and from
11 Dr. Sachy's testimony that he scored -- that he actually had
12 an above average IQ, I believe 140 I think, and that he
13 actually scored normally on many neuropsychological tests
14 from Dr. Sachy. That's from what I recall.

15 Q: And am I correct in understanding that you testified
16 that your primary modality of assessment is a visual analysis
17 that you conduct on the scans that you were given?

18 A: Yes. An eyeball exam. That was -- I mean that's the
19 primary modality of reviewing scans clinically is a visual
20 analysis.

21 Q: And you flew here to Georgetown, South Carolina, to
22 testify in 2006 about your primary modality of assessment,
23 which was your visual assessment; is that correct?

24 A: That's correct.

25 Q: And then you flew back to Irvine, California, and then

1 you were called back out here to the East Coast again for the
2 second phase of the trial; is that correct?

3 A: Yes.

4 Q: And each time that you have testified, both in 2006 and
5 today, you have diagnosed Mr. Stanko with a frontal lobe
6 impairment; is that correct?

7 A: Then you have the PET scan abnormality in the frontal
8 lobe, yes, and consistent with a frontal lobe impairment.

9 Q: Okay. Now today, you talked about the right medial
10 limbic structures; is that correct?

11 A: Yes.

12 Q: Now, is the limbic system responsible for regulating
13 impulse control in an individual?

14 A: It is a part of the -- yes, it is part of the system.
15 That's correct. The frontal lobe and the temporal limbic
16 system are the two main components.

17 Q: So to the extent that today you talked about the frontal
18 lobe system and the right medial limbic structures, both of
19 those areas of the brain relate back to Mr. Stanko's ability
20 to control his impulses and his aggression; is that correct?

21 A: Yes.

22 Q: And is it true that in reaching your previous visual
23 analysis and diagnosis, you looked at Dr. Gur's volumetric
24 brain analysis?

25 A: I -- I mean I was aware of Dr. Gur's volumetric brain

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1 analysis when reading his testimony.

2 Q: Well, are you aware that you testified specifically
3 about Dr. Gur's volumetric brain analysis when you came here
4 in 2006?

5 A: Now that you mention it, it does jog my memory that I do
6 -- I do remember seeing that. I think I didn't recall it
7 initially, but I think I reviewed it prior to my testimony.
8 I believe that that's correct.

9 Q: Dr. Wu, do you still have that copy of the Volume 4 of
10 the trial transcript in this case in front of you?

11 A: Yes.

12 Q: Could you please turn to page 1677 for me?

13 A: Sure.

14 Q: And that's the big page number in the middle by the
15 binder.

16 A: Yes.

17 Q: And could you please read for the Court lines 14 to 22?

18 A: Okay.

19 The second type of abnormality is the measurement of the
20 size of the frontal lobe region, Dr. Reuben Gur's volumetric
21 approach in which he shows significant decrease in the size
22 and the volume of the frontal lobe.

23 Q: Could you please continue the next four lines?

24 A: Okay.

25 And so there are two separate ways of looking at brain

1 function. They both show two very different approaches that
2 Mr. Stanko had an abnormal brain in the frontal lobe area.

3 Q: And really you said they both really -- they both show
4 really two very different approaches; is that correct?

5 A: Yes. A volumetric approach and a metabolic approach.

6 Q: So it's true that you were aware of the volumetric brain
7 analysis prior to your initial testimony?

8 A: I was aware of the volumetric defect in the frontal
9 lobe. I don't recall being aware of the right medial
10 cortical hippocampal amygdala four standard deviation
11 decrease.

12 Q: And the hippocampus and the amygdala are all part of
13 that limbic structure system; is that correct?

14 A: Yes.

15 Q: So they all regulate impulse control?

16 A: Yes.

17 Q: Okay. Did you conduct a new PET scan on Mr. Stanko in
18 preparation for today?

19 A: No.

20 Q: Was any new PET scan conducted after the PET scan that
21 was done for the 2006 trial?

22 A: No.

23 Q: Have you ever personally met with Mr. Stanko?

24 A: You know, I think I saw him at the trial, you know. I
25 don't think that, other than that, I have met him.

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1 Q: So you've never conducted any battery of written tests
2 with Mr. Stanko?

3 A: No.

4 Q: Have you ever conducted with Mr. Stanko what you would
5 consider to be a hands-on clinical practice?

6 A: No.

7 Q: How many of your clients would you say you do conduct a
8 hands-on clinical practice with before you testify about them
9 in court?

10 A: I would say in capital mitigation cases, it's unusual or
11 rare. I would say maybe less than five percent.

12 Q: And you were retained for this case in 2006 to visually
13 look at the PET scans that were conducted; correct?

14 A: Yes.

15 Q: And you testified earlier that you had the benefit in
16 this case that the continuous performance test or the CPT
17 test had been conducted on Mr. Stanko before his PET scan was
18 taken; correct?

19 A: As his PET scan was being taken, yes.

20 Q: And that is your preferred methodology of PET scan
21 imagery; is that correct?

22 A: Yes.

23 Q: Dr. Wu, if I could have you turn in that same volume of
24 the record to page 1683?

25 A: Okay.

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1 Q: And if you could go to the bottom of that page at line
2 22?

3 A: Yes.

4 Q: And that is a question there that was posed on cross-
5 examination by the State?

6 A: Uh-huh.

7 Q: Does that seem right?

8 A: Yes.

9 Q: And the question was you were shown Defendant's 1,
10 referring to an exhibit, and you said there was clearly some
11 -- how did you describe it in regard to the frontal lobe.

12 And could you read me your testimony beginning on line 25 of
13 that page and turning into the next page?

14 A: Significant decrease in frontal quantitative volumetric
15 measurement in terms of a four standard deviation difference.

16 Q: And would that be referring to Dr. Gur's volumetric
17 brain analysis again?

18 A: Yes.

19 Q: And is the next question how would you characterize the
20 medial measurement?

21 A: Well, I would say that there appears to be a decrease as
22 well on the right side.

23 Q: So the next question was is that substantially more
24 significant even than the front, wouldn't you say?

25 A: Yes.

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1 Q: So is it fair to say that from this testimony at -- from
2 the cross-examination at Mr. Stanko's 2006 trial, you were
3 being asked specifically about that right medial
4 differentiation that you've identified today?

5 A: I was, but I was unaware that the medial analysis
6 included specifically the hippocampus and amygdala, which --
7 so I think they were discussing it in very generic terms and
8 so I was unaware of the specifics.

9 Q: But you would agree that it was discussed at trial; is
10 that correct?

11 A: Yes.

12 Q: Okay. Going back also to the trial, were you aware that
13 Dr. Bernard Albiniaak was who -- he testified at trial in 2006
14 and he was qualified as an expert in physiological
15 psychology?

16 A: I have no knowledge of his role.

17 Q: So you did not reread Dr. Albiniaak's testimony in
18 preparation for today?

19 A: No.

20 Q: So you were not aware that he testified that brain
21 scanning technology is now the modern-day way of examining
22 the brain?

23 A: I'm not aware of what he stated.

24 Q: Okay. So you're not aware that he discussed the limbic
25 systems and what they control in the brain?

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1 A: No.

2 Q: So you're not aware that he talked about how the limbic
3 systems include the amygdala and the frontal lobe and that
4 they assist someone in making decisions and choosing between
5 right and wrong?

6 A: I don't recall seeing or reading or even being aware of
7 any of his testimony.

8 Q: So you don't recall that he would've testified that a
9 PET scan could show you the functionality of the brain and
10 its system and diagnosis?

11 A: I'm unaware of what he stated.

12 Q: And you're not aware that he testified about Mr. Stanko
13 having a difficult birth and a diminished control of his
14 impulsive behavior?

15 A: I'm unaware of what he stated.

16 Q: Did you review Dr. James Thrasher's testimony from the
17 2006 trial before you came here today?

18 A: No.

19 Q: So you are not aware that he was qualified as an expert
20 in psychiatry and forensic psychiatry?

21 A: I'm not aware of what he was qualified in.

22 Q: And you're not aware that he opined at trial before you
23 flew in from California to testify that Mr. Stanko had a
24 mental disease and a defect or disorder at the time of the
25 crime?

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1 A: I'm unaware of what he testified.

2 Q: Are you aware that Dr. Thrasher conducted an interview
3 and a series of exams with Mr. Stanko before reaching that
4 opinion?

5 A: I'm unaware of what he did.

6 Q: You're not aware that he looked at the birth records and
7 the family history of Mr. Stanko being hit in the head with a
8 beer bottle and then testified about both of those things at
9 trial?

10 A: I'm unaware of what he looked at.

11 Q: So you're unaware that Dr. Thrasher testified that he
12 reviewed records in preparation for his 2006 testimony and
13 identified a reduced structure in Mr. Stanko's brain and
14 reduced function?

15 A: I'm unaware of what he testified about.

16 Q: But you are aware that Mr. Stanko was diagnosed with
17 antisocial personality disorder; correct?

18 A: That was in Dr. Sachy's testimony, yes.

19 Q: Were you aware that Dr. Thrasher also testified that Mr.
20 Stanko had antisocial personality disorder with a socialized
21 overlie and is prone to sudden violence when threatened?

22 A: I'm unaware of what he testified.

23 Q: So you're not aware that he also talked that frontal
24 lobe function includes the hippocampus?

25 A: I'm unaware of what he discussed.

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1 Q: Did you read Dr. Mike Einhorn's testimony from the 2006
2 trial before you testified today?

3 A: No.

4 Q: Were you there when Dr. Einhorn testified at trial and
5 was admitted as an expert in neuropsychology?

6 A: No.

7 Q: So were you aware that Dr. Einhorn did a
8 neuropsychological examination on Mr. Stanko?

9 A: Yes. Because Dr. Sachy discussed that.

10 Q: Okay. And you were aware that Dr. Einhorn did the
11 continuance performing -- continuance performance test with
12 Mr. Stanko before the PET scan was administered?

13 A: Yes.

14 Q: So you did read Dr. Thomas Sachy's trial testimony
15 before you came here today; is that correct?

16 A: Yes.

17 Q: So you are aware the Dr. Sachy was admitted as an expert
18 at trial in psychiatry, forensic psychiatry, and
19 neuropsychiatry?

20 A: Yes.

21 Q: And were you aware that Dr. Sachy conducted a personal
22 interview with Mr. Stanko?

23 A: Yes. I was aware of that. He stated that in his
24 testimony.

25 Q: Were you aware that his testimony equated the term

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1 insanity with causation due to a dysfunction in the brain?

2 A: Yes.

3 Q: Were you aware that Dr. Sachy testified also about Dr.
4 Reuben Gur's volumetric brain analysis?

5 A: Yes. And that's -- yes.

6 Q: And he identified during his testimony -- Dr. Sachy did
7 -- that there was a frontal lobe abnormality evident in Dr.
8 Gur's report?

9 A: Yes.

10 Q: Do you recall Dr. Sachy testifying about how the medial
11 lobes of the brain regulate memory?

12 A: Yes.

13 Q: Do you recall that Dr. Sachy diagnosed Mr. Stanko with a
14 brain defect; correct?

15 A: Yes.

16 Q: Do you recall that Dr. Sachy discussed in his testimony
17 how until about 1980 antisocial personality disorder was
18 called psychopathy as a matter of medical terminology and
19 literature?

20 A: Yes.

21 Q: Do you recall his testimony expounding upon how some of
22 the medical literature that was in publication in 2006 still
23 referred to antisocial personality disorder as psychopathy
24 and, therefore, was a medical term?

25 A: Yes.

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1 Q: Did you -- do you recall how Dr. Sachy discussed the
2 potential causes for the defect in Mr. Stanko's brain?

3 A: Yes.

4 Q: Potentially coming from a blow to the head; correct?

5 A: Yes.

6 Q: And from having low oxygen at birth; correct?

7 A: Yes.

8 Q: Do you recall Dr. Sachy talking about how in most cases
9 because you don't have this imagery available that you cannot
10 identify a cause for someone's poor impulse control?

11 A: Yes.

12 Q: Do you remember Dr. Sachy testifying about how Mr.
13 Stanko might not remember certain details of the crimes for
14 which he faced trial, but he also might choose not to
15 remember certain details as well?

16 A: Yes.

17 Q: Do you disagree with that?

18 A: No.

19 Q: Do you recall Dr. Sachy testifying about how the images
20 that he reviewed showed a lack of activity in the middle
21 frontal orbital lobe?

22 A: Yes.

23 Q: And that would be related to the frontal lobe; is that
24 correct?

25 A: Right. So the medial orbital frontal lobe. That's

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1 correct.

2 Q: Do you remember how Dr. Sachy testified at trial that
3 there was, from his review of the facts of the case, a
4 conflict between the victim of the murder and Mr. Stanko and
5 that that could trigger a limbic system response?

6 A: Yes.

7 Q: Do you recall Dr. Sachy discussing that Stanko was
8 previously diagnosed with mixed personality disorder?

9 A: Yes.

10 Q: And that would have been from the time period from the
11 previous crimes when he was incarcerated for a string of
12 Berkeley County crimes; is that correct?

13 A: Yes.

14 Q: Do you recall Dr. Sachy giving his diagnosis and then
15 speaking about Mr. Stanko's personal records, his life
16 history?

17 A: Yes.

18 Q: Do you remember him saying that antisocial personality
19 disorder is a mental disease or defect and not a choice that
20 Mr. Stanko would have made?

21 A: Yes.

22 Q: Were you aware, Dr. Wu, that Mr. Stanko has published or
23 co-published at least one book?

24 A: Yes. About his life in prison.

25 Q: And are you aware of what time period in his life he

1 published that?

2 A: I'm not sure the exact time period in which he published
3 that.

4 Q: But it was about his life in prison; correct?

5 A: Yes.

6 Q: So would it be fair to say that if Mr. Stanko had a
7 large collections of writings on this person that that could
8 be related to the writings that he made when he was writing a
9 book while he was in prison?

10 A: I believe that -- that the book came in part because he
11 had hypergraphia. I think --

12 Q: I'm sorry, Dr. Wu. What -- what records have you
13 reviewed or what battery of testing have you conducted that
14 would allow you to opine that Mr. Stanko specifically has
15 hypergraphia, other than the images that you've looked at?

16 A: Well, I mean there was the memo by Dale Davis.

17 Q: Uh-huh. And can you describe the contents of that memo?
18 Is that just kind of like a Wikipedia cut-and-paste that was
19 emailed?

20 A: No. This is a confidential memo, attorney-client work
21 product to the attorneys from Dale Davis dated 4/16/06, and
22 --

23 Q: Are you aware if Mr. Stanko is currently on any
24 antiseizure medication?

25 A: I'm not aware of what medications he is on.

DR. JOSEPH WU - CROSS BY MS. SCRANTOM

1 Q: Are you aware of any other doctor between 2006 and now
2 who has treated Mr. Stanko for symptoms of epilepsy disorder?

3 A: No.

4 Q: So the only two instances of epilepsy or epilepsy
5 disorder that you testified about earlier that you know about
6 are when he went into a rage and incurred a number of victims
7 and then was criminally prosecuted for it?

8 A: Yes. I believe that that was triggered by the stress
9 which caused a -- sort of the equivalent of an electrical
10 storm in the insular cortex.

11 Q: And you're aware that Mr. Stanko was in prison before
12 the Ling crimes; correct?

13 A: Right. For kidnapping of his previous girlfriend.

14 Q: For the kidnapping of his previous girlfriend, but were
15 you aware of any incidents of him being triggered in the
16 prison environment at that time?

17 A: I'm not aware of that.

18 Q: Would you consider a prison environment to be stressful?

19 A: I think it can be very -- it can be very structured in a
20 way that the outside world is not structured and so it can
21 actually be less stressful depending upon the personality.

22 Q: If Mr. Stanko was not on death row previously, would he
23 have been in general population? Do you have knowledge of
24 that?

25 A: I assume that that would be correct. I'm not a prison

DR. JOSEPH WU - CROSS BY MS. SCRANTOM

1 expert though.

2 Q: Would there then be the potential for the other inmates
3 in that population --

4 MS. VANN: Objection, Your Honor. I think this is
5 outside his --

6 THE COURT: Let her finish the question first, please.

7 BY MS. SCRANTOM:

8 Q: Do you --

9 THE COURT: Finish your question, please.

10 BY MS. SCRANTOM:

11 Q: Based on your earlier testimony, do you believe that
12 there was the potential for Mr. Stanko to incur stress from
13 other people in the prison population with him?

14 THE COURT: Hold on. You got an objection?

15 MS. VANN: I believe that the general population is
16 outside of his realm of expertise. We had an expert --

17 THE COURT: I'll allow him to answer the question if he
18 knows the answer to it.

19 BY MS. SCRANTOM:

20 A: I'm not sure. I would say that based on what I've heard
21 about this prison disciplinary officer who was saying that
22 Stanko was a disciplinary representative and that he was
23 voted as such by the prison population and that he was
24 helping them with their disciplinary records and helping them
25 with their GED, I got the impression that he was not looked

DR. JOSEPH WU - CROSS BY MS. SCRANTOM

1 down upon in the prison population. That the fact that he
2 was actually voted as representative seemed to indicate that
3 he must've been held in some esteem by the average prisoner
4 because there was only one disciplinary prison
5 representative.

6 And so I imagine that he might not have been under a lot
7 of stress if he was in a population that felt he was, you
8 know, kind of helping. He was helping them and they voted
9 him to be the disciplinary representative. That's just --
10 I'm not a prison expert; so that's just my surmise.

11 Q: Okay. Thank you. You have in no way today retracted
12 your diagnosis that you gave in 2006, have you?

13 A: I mean I don't -- I'm not retracting my diagnosis that
14 he has an abnormal decrease in the orbital frontal cortical
15 metabolism.

16 Q: So in all of the areas of the brain that you have
17 discussed in your various testimonies in Mr. Stanko's course
18 of litigation, you maintain at all times that he has an
19 impairment of his brain in the areas of the brain that
20 regulate impulse control; is that correct?

21 A: In the area of the brain, yes, and associated with
22 impaired impulse control, yes.

23 MS. SCRANTOM: I beg the Court's indulgence one moment.

24 THE COURT: Yes, ma'am.

25 BY MS. SCRANTOM:

DR. JOSEPH WU - CROSS BY MS. SCRANTOM

1 Q: Dr. Wu, are you familiar with the symptoms of temporal
2 lobe epilepsy?

3 A: I have some familiarity with it.

4 Q: What are they?

5 A: Well, I would say that it depends upon the kind of
6 manifestation. Some individuals can have what we call, like,
7 an attack of seizures where they can kind of space out, stare
8 off into space, and so that's one manifestation of temporal
9 lobe epilepsy.

10 Those can include things such as déjà vu experiences,
11 feeling like you've been someplace that you've never been.
12 Others can include things like unusual perceptions of
13 olfactory or gustatory sensations. Sometimes people have a
14 sensation that they feel like there's something under their
15 skin. So those -- those are some of the symptoms.

16 Q: Does Mr. Stanko have any of those symptoms based on the
17 records you reviewed?

18 A: I have not seen any of those symptoms mentioned in the
19 records I reviewed, but, you know, you kind of have to ask
20 for those things. I mean it's not the kind of thing the
21 average person is going to note.

22 Q: You haven't asked for any of those things, have you?

23 A: I mean I just -- no. I mean I asked for what records
24 were available and I was provided with, you know, the records
25 that were available.

DR. JOSEPH WU - CROSS BY MS. SCRANTOM

1 Q: Did you ever pick up the phone and call Bill Diggs and
2 ask specifically for any particular type of record?

3 A: No. I mean I stated that in my report.

4 Q: Okay?

5 A: That I think the records can be forwarded, but I never
6 called Mr. Diggs, you know. It's in writing. If he wants to
7 send it to me, he'll send it to me, you know.

8 Q: And so you were retained to testify at trial and look
9 and do your visual analysis of the PET scans; correct?

10 A: Yes.

11 Q: And you feel that you did that in 2006; correct?

12 A: Yes.

13 Q: And you wouldn't change anything about that visual
14 observation that you did at that time?

15 A: No. I mean I thought that the visual analysis was
16 correct and -- and that was what I was asked to do. So I did
17 what I was asked to do.

18 Even though I indicated that, you know, clinical
19 correlation is recommended, you can forward me records, you
20 know, there seemed to be no interest in doing so. So, you
21 know, it's not my place to really insist on something.

22 MS. SCRANTOM: All right. Thank you, Dr. Wu. No
23 further questions.

24 THE COURT: Redirect?

25 MS. VANN: Briefly, Your Honor.

REDIRECT EXAMINATION

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BY MS. VANN:

Q: Dr. Wu, when you returned to South Carolina to testify the second time at the Georgetown trial, do you know if that was during the guilt or the penalty phase?

A: I'm not sure what phase it was. I wasn't paying attention to specifically which phase it was.

Q: And do you recall what it was that they asked you to come back and testify about?

A: They were calling me to come back and testify about, I think, Spicer's testimony about the statistical analysis that they ran and -- and there was a significant flaw in the -- in the analysis of that because they were running a statistical analysis against an incorrect control group because Mr. Stanko had a CPT scan and the comparison group they were using did not have a CPT scam. So I said that this was an inaccurate and invalid statistical comparison. It was like comparing apples to oranges.

Q: And Dr. Spicer -- was he a State expert?

A: Yes.

Q: And so it was that the State had run the analysis against a resting PET scan?

A: That's correct. They said that based on their analysis with a resting normative group that there was no difference. Now, resting normative groups also have a higher standard

DR. JOSEPH WU - REDIRECT BY MS. VANN

1 deviation than a CPT group. And so it's harder to detect the
2 differences with a resting group because there's a greater
3 degree of variability encountered to a resting group.

4 Q: And were you asked as part of any of your testimony to
5 discuss the functional results -- I'm sorry -- the functional
6 -- the behavioral aspects within Mr. Stephen -- Mr. Stanko's
7 behavior specifically?

8 A: I was never asked to discuss the -- how the findings
9 might relate specifically to Stephen's behaviors. I was
10 never provided with any information about Stephen's behavior
11 to be able to even consider addressing that issue.

12 Q: At either the guilt or the penalty phase?

13 A: That's correct.

14 MS. VANN: Thank you, Your Honor. No further questions.

15 THE COURT: Any recross?

16 MS. SCRANTOM: No, Your Honor.

17 THE COURT: Sir, you may step down. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Can the lawyers approach a minute, please?

20 (WHEREUPON, a bench conference was held as follows.)

21 THE COURT: Have y'all got one more witness?

22 MS. VANN: Just Arlene Andrews, yes, Your Honor.

23 THE COURT: We're going to break for lunch.

24 MS. VANN: Okay.

25 THE COURT: What time do y'all want to start back?

1 MS. VANN: Two?

2 THE COURT: Two? 2:15. How long is Shaffer going to be
3 do you think?

4 MS. SCRANTOM: Until he gets here or when I --

5 THE COURT: He's here now.

6 MS. SCRANTOM: Okay.

7 THE COURT: At least I think that's him sitting back
8 there.

9 MS. SCRANTOM: Probably -- I can't imagine it going
10 longer than 30 minutes.

11 THE COURT: Okay.

12 MS. SCRANTOM: Twenty minutes.

13 THE COURT: How about Ms. Arlene --

14 MS. VANN: Andrews. Maybe 60 or 90 minutes on direct.

15 THE COURT: And then who is crossing? Are you crossing
16 her?

17 MR. ZELENKA: Yeah, I'm going to cross her.

18 THE COURT: All right. That's fine. We'll see where we
19 are after.

20 MR. ZELENKA: Okay.

21 (WHEREUPON, the bench conference ended and the
22 proceedings resumed as follows.)

23 THE COURT: All right. 2:15.

24 (WHEREUPON, there was a break in the proceedings from
25 1:00 p.m. until 2:14 p.m., after which the proceedings

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 resumed as follows.)

2 THE COURT: All right. Is the State ready to proceed?

3 MS. SCRANTOM: Yes, Your Honor.

4 THE COURT: The applicant?

5 MS. VANN: Yes, Your Honor. Thank you. The applicant
6 calls Dr. Arlene Andrews.

7 THE BAILIFF: Place your left hand on the Bible and
8 raise your right.

9 THE CLERK: Do you solemnly swear or affirm that the
10 testimony you are about to give is the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Please be seated and then state
14 and spell your full name for the record, please.

15 THE WITNESS: My name is Arlene Bowers Andrews,
16 A-r-l-e-n-e B-o-w-e-r-s A-n-d-r-e-w-s.

17 ARLENE ANDREWS, being first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. VANN:

21 Q: Good afternoon, Dr. Andrews. Could you start by telling
22 us about your current employment?

23 A: I'm actually retired. I'm a Carolina distinguished
24 professor emerita from the University of South Carolina.

25 Q: Okay.

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 A: And I do part-time consulting.

2 Q: And, Professor --

3 THE COURT REPORTER: She's going to have to speak up.

4 THE WITNESS: I'm sorry.

5 THE COURT: Okay.

6 THE COURT REPORTER: I missed the last line.

7 THE WITNESS: Sorry. Did you get that I was a professor
8 at the --

9 THE COURT REPORTER: Yes.

10 THE WITNESS: -- University of South Carolina.

11 THE COURT REPORTER: After that.

12 THE WITNESS: Okay. And I currently do consulting.

13 BY MS. VANN:

14 A: And what were your -- what was your specialty when you
15 were a professor?

16 A: I was a professor in the College of Social Work. I'm a
17 social worker and a psychologist.

18 Q: Could you describe for the Court your educational
19 background?

20 A: I have a bachelor's degree from Duke University and a
21 Master's degree in social work from the University of South
22 Carolina and a PhD in clinical community psychology from the
23 University of South Carolina.

24 Q: And your work experience?

25 A: I -- early in my career, I was involved in building

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 community organizations for the prevention of violence with a
2 particular focus on prevention of child abuse and neglect and
3 domestic violence. I was the founding director of Sister
4 Care, which is a network of services for people affected by
5 domestic violence.

6 I then entered academia. I was a teacher, professor, a
7 researcher, and an administrator. I was director of the
8 Institute for Families in Society for a number of years,
9 where we did research on studying ways to effectively
10 strengthen families who face challenges.

11 Q: Have you written any books?

12 A: I have. I've written a number of articles and several
13 books. I have a book called *Social History Assessment*. I
14 wrote a book called *Victimization and Survivor Services*. I
15 also taught a course by that name. I have co-authored some
16 books involving children's rights and -- and have a number of
17 refereed articles that have been published.

18 MS. VANN: May I approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. VANN:

21 Q: I'm handing you a document. Could you review that and
22 let me know what it is?

23 A: This is my curriculum vitae.

24 Q: And did you prepare it?

25 A: I did.

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 Q: Is it your current curriculum?

2 A: It is. I believe so. Yeah.

3 MS. VANN: I would move to have this admitted as
4 Applicant's Exhibit 28.

5 MR. ZELENKA: No objection.

6 THE COURT: Without objection, so admitted.

7 (WHEREUPON, Plaintiff's Exhibit Number 28, CV of Dr.
8 Arlene Andrews, was admitted into evidence.)

9 BY MS. VANN:

10 Q: And does this provide your detailed employment and
11 publication history?

12 A: Yes, for the most part.

13 Q: Can you describe what a social history assessment is?

14 A: Yes. It's a thorough look at the life history of an
15 individual and it could be done for a variety of reasons, but
16 basically, it involves getting accurate information about
17 what happened when, major life milestones that might have
18 happened in a person's life, and carefully documenting that
19 and writing it down and then applying an interpretation of
20 what the -- what the themes in the life are, and that
21 interpretation is informed by social theory and research
22 about the kinds of things that may have happened in an
23 individual's life.

24 In looking at the social history in the descriptive
25 part, we use what we call an ecological lens through the

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 social ecology of the individual, family, social networks,
2 community, even policy implications that may have affected a
3 person's life.

4 Q: And what are some examples of where a social history
5 assessment is used?

6 A: In social work, we say sooner or later you are going to
7 need a social worker, often in late life, and elder care is
8 one of the places they're done in terms of trying to decide a
9 best place for an older person to live.

10 I first started doing social history assessments when I
11 worked in the field of developmental disabilities in looking
12 at what the needs of young children were who were diagnosed
13 with disabilities and what might be best in terms of where
14 they could go for child care or school.

15 And in foster care settings, there are thorough
16 histories done to try to find the right kind of placement for
17 a child in an assessment of whether they can remain at home
18 or not, if there's an issue of protection. They are very
19 thoroughly done in cases of adoption, for example.

20 So there -- and mental health assessments they're often
21 used. In fact, they are essential to -- as a foundation for
22 a good psychiatric assessment.

23 Q: How many social history assessments have you conducted
24 over your career?

25 A: Oh, hundreds. And I've supervised more because a lot of

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 my career was as a teacher or a director of clinics or
2 administrator. So I've been more of a mentor than actually
3 directly conducting them, but it's many hundreds.

4 Q: And you mentioned that you start -- what context have
5 you done your social history assessments in?

6 A: Well, as I mentioned, throughout my career in different
7 settings, but in recent years I've done them in mitigation
8 for death penalty cases.

9 Q: And have you done them in other instances as well?

10 A: Right. In the -- in settings particularly involving
11 people with disabilities or mental health needs.

12 Q: Have you previously been qualified as an expert in
13 social history assessments?

14 A: Yes.

15 Q: In what courts?

16 A: In state and federal courts in South Carolina, Georgia,
17 California, Texas.

18 Q: Do you have an idea of how many times you've been
19 qualified as an expert?

20 A: Oh, gosh, perhaps 20.

21 MS. VANN: At this time, I would move to have Dr.
22 Andrews qualified as an expert in social history assessment.

23 MR. ZELENKA: No objection.

24 THE COURT: Without objection, so qualified.

25 BY MS. VANN:

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 Q: How does a social history assessment in a capital case
2 compare to a social history assessment done in some of the
3 other contexts you mentioned?

4 A: It's substantially more thorough because the -- there's
5 a question -- there's always a question that's guiding a
6 social history, like where to place a child or what the best
7 course of treatment might be, but although the person
8 preparing a social history assessment doesn't make a
9 definitive recommendation, the decision is life or death. So
10 the question about life is informed by a very thorough life
11 history so that there is a clear description of what the
12 person's life has been like.

13 Q: What goes into completing a social history assessment in
14 a capital case?

15 A: There's a -- there are thorough review of records and
16 those would include health records, educational records,
17 mental health records, if there are any. As a person goes
18 into adulthood, any employment or military records might be
19 relevant, but really just about any kind of record that might
20 pertain to -- sometimes that involves letters or family photo
21 books and things like that just to look to try to get an idea
22 what goes into -- or what has happened in documenting the
23 life of a family.

24 Q: Do you create any summary documents from that review?

25 A: I do, from the records. Yeah, I usually do a

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 chronology. The other major source of information are
2 interviews, lots of interviews of, again, people in the
3 social network, the immediate family certainly, if possible,
4 and social networks, including friends, teachers, doctors,
5 people who -- coaches, people who may have known the client.

6 I -- it helps to put it all in a chronology because
7 things begin to emerge as you prepare a chronology. And so I
8 find that to be a very useful tool before I start sort of
9 identifying themes.

10 Q: How long does a typical social history assessment take
11 to complete?

12 A: In mitigation cases?

13 Q: Yes, in a capital case.

14 A: Oh, months, sometimes more than a year. It can be very
15 extensive. Records are sometimes difficult to obtain. They
16 -- there has to be extra time for research. As you interview
17 one person, you find out there's more information in another
18 place. So it's sort of one thing leads to another.

19 There's very often trauma in the family or in the people
20 that you are interviewing, which causes the interview process
21 to -- to need to be handled much more carefully, and often
22 multiple interviews are required in order to get a thorough
23 understanding.

24 Q: How would you describe what is the end product of a
25 social history evaluation in a capital case?

1 A: Well, the end product is -- is usually an opinion about
2 what the major themes in the life were and, in terms of
3 documentation, it might be some sort of graphic
4 representations. There's almost always a family tree or a
5 genogram. There may be charts to help understand the kind of
6 things. Sometimes it's a time chart, if there have been
7 multiple traumas in a life, for example. Sometimes it's just
8 an identification of core themes that were challenges during
9 the life.

10 Q: And I'll turn to this case now. What were you asked to
11 do specifically in Mr. Stanko's case?

12 A: I was asked to particularly -- to look at the life
13 history and then to particularly focus on the stressors that
14 were present in Mr. Stanko's life from the time he was
15 released from prison in -- at the end of July in 2004 to the
16 time of this crime, and to look at how he was able to manage
17 the stressors in his life.

18 Q: And how did you go about doing that in this case?

19 A: Well, I started looking at records. Now, in this case,
20 because it's a post-conviction case, there were a number of
21 trial transcripts that I looked at. And because I prefer to
22 do individual interviews on my own, but because those are
23 sworn testimony, I felt they were pretty reliable.

24 I also did some interviews of my own, but then relied
25 too on some mitigation interviews that had been done, which I

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1 don't normally do because I would go in and repeat those, but
2 because of the size of the file, it just made it more
3 expeditious to look at those.

4 So I interviewed a number of people and I looked at a
5 number of records.

6 Q: Are there any sources that you sought that you were not
7 able to obtain?

8 A: I was unable to speak with Stephen's sister, Cindy. She
9 wouldn't agree to talk with me. I also would've liked to
10 have had information from his mother or his father. Of
11 course, they are deceased now, but there were no records of
12 interviews with them from the earlier trials, which was
13 unfortunate.

14 I also could not get medical records related to the
15 incident, an incident in which he was hit in the head with a
16 full beer bottle, which would've been helpful to have. And I
17 think there was one other thing I was looking for.

18 Q: Was there an assessment from Dr. Wade at MUSC?

19 A: Right. There was mental health treatment that I
20 couldn't find that I was told the records couldn't be found
21 on it at the Medical University of South Carolina.

22 Q: I'd like to show you a document that you prepared.

23 MS. VANN: May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MS. VANN:

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 Q: Could you describe what this is?

2 A: This is the list of sources of the people I interviewed,
3 the records I reviewed, which included education records,
4 mental health records, vital stat -- vital records, mostly
5 birth certificates, and some newborn health records. I
6 didn't have very many employment records for Mr. Stanko
7 except from the Department of Voc Rehab, and then rather
8 extensive criminal justice system records.

9 I also looked at -- he's the author of some book
10 chapters in a criminal justice textbook. I read those and
11 read some emails and a letter from his sister, Peggy, his
12 older sister, and looked -- read a number of mitigation
13 investigators' notes.

14 Q: And did you prepare this list as a summary of the
15 sources that you used?

16 A: I did.

17 MS. VANN: At this time, I would move to have this
18 admitted as Applicant's Exhibit 29.

19 THE COURT: Any objection?

20 MR. ZELENKA: No objection.

21 THE COURT: Without objection, so admitted.

22 (WHEREUPON, Plaintiff's Exhibit Number 29, source list,
23 was admitted into evidence.)

24 BY MS. VANN:

25 Q: I believe you have a notebook there with you of some --

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 of the relevant social history records?

2 A: I do.

3 Q: Could you describe what records are in this notebook?

4 A: They include the maternity birth records of Ms. Joan
5 Stanko, who is Stephen Stanko's mother, at the time of his
6 birth. They include birth records related to his birth.

7 There is a set of the birth certificates for his family.
8 I was interested in their birth, birthdays, and birth order.
9 There are records related to the death of his brother, Billy
10 Stanko.

11 There are records from the Berkeley Community Mental
12 Health Center where he received outpatient treatment, Stephen
13 Stanko did. There is an evaluation done at William S. Hall
14 that was a forensic evaluation done of Stephen Stanko.

15 There are records from the Department of Probation,
16 Pardon, and Parole in South Carolina relating to Stephen
17 Stanko, his vocational rehabilitation records, and some
18 family emails in the period 2004 and 2005.

19 Q: And are these records you used in forming your opinion
20 in this evaluation?

21 A: They are. I should say those family emails included
22 emails from Laura Ling.

23 Q: And are they the type of records that you generally rely
24 on in conducting a social history assessment?

25 A: Yes.

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 Q: And will they assist you in testifying to your opinion
2 today?

3 A: Yes.

4 MS. VANN: I would move to admit this as Applicant's
5 Exhibit 30.

6 MR. ZELENKA: No objection.

7 THE COURT: Without objection, so admitted.

8 (WHEREUPON, Plaintiff's Exhibit Number 30, social
9 history notebook, was admitted into evidence.)

10 BY MS. VANN:

11 Q: Based on your social history assessment, could you
12 provide us with a brief summary of your findings?

13 A: I will. I looked at -- Mr. Stanko was 37 years old when
14 he committed this crime, which is a rather long period. So I
15 looked at his childhood and youth, and then also his
16 adulthood.

17 Starting with his childhood and youth, what I found was
18 that he was from a stable, two-parent family. He was the
19 youngest, and all of his essential needs were met throughout
20 his life. They had adequate food, shelter, the basics of
21 life were well provided for, healthcare. It was a very
22 predictable and protected environment.

23 I also found that he was an exceptionally accomplished
24 young man, boy and youth. Probably the best way to summarize
25 it is when he graduated from high school in a class of 325,

DR. ARLENE ANDREWS - DIRECT BY MS. VANN

1 he was 15th from the top. He did well in academics. He did
2 well in sports. He had an active social life.

3 He was known as being socially responsible, not known
4 for taking risks. There's no history of drug use, other --
5 any kind of trouble. He was never in trouble in high school
6 or in -- or in the early years.

7 His family did suffer a pretty terrible trauma when he
8 was 15 when his brother, Billy, died, and that has impacted
9 the family.

10 He was in good health throughout his life, although I
11 did note these -- sort of set three different types of
12 medical issues that affected his head. One was at birth.
13 There are notes related to intracranial damage. There was
14 repeated hits, because he was a catcher, and hits across his
15 body but also to his head. And then one major incident where
16 he was hit on the head with a bottle.

17 The only unusual thing I found about the family dynamic
18 was the -- it was a very caring family. They were engaged,
19 but the father was -- had some pretty strong expectations
20 that caused the family to seem to put a lot of energy into
21 not upsetting him, which caused them not to communicate about
22 a lot of things so that they were -- they would -- would be
23 present with one another, but not share their feelings and
24 talk about particularly problems for fear of upsetting him.

25 Q: And could you give us a summary of your findings related

1 to his adulthood after that?

2 A: Well, there were -- I -- there were a number of
3 different sources that indicate that at some point -- and
4 it's hard to pinpoint, but it seemed to be in his senior year
5 in high school or soon thereafter everyone concedes that he
6 went to work after high school at Circuit City and he began
7 to show a definite personality change, and that some of the
8 symptoms of that was that it started with his bragging and --
9 and then lying to others.

10 And for seven years after high school -- well, one of
11 the major things was he didn't go to college even though he
12 was a college preparatory student, but he worked in sales.
13 He had a number of different jobs, and he was socially
14 engaged and involved with his family, but he sort of
15 increasingly seemed to get in more and more trouble, some of
16 which wasn't -- it wasn't detected until about six years
17 later after high school.

18 But he was doing fraudulent things or stealing, and it
19 was -- his mother seems to think that he was living in a
20 fantasy world, according to the information she gave to the
21 psychiatric evaluator years later. So these behaviors were
22 very inconsistent with his upbringing, with his family
23 standards, and with the way he had behaved before he finished
24 high school.

25 By the time he was 25, he was engaged in illegal schemes

1 that got him in trouble with the law and he was on probation
2 and received court ordered mental health therapy, but then he
3 started stealing again and was again ordered to therapy,
4 which he started at MUSC.

5 But then very suddenly, he committed an act, a violent
6 act. He assaulted his -- the girlfriend he lived with, and
7 for that and for the stealing, he was sent to prison for a
8 10-year sentence and he served 8 and 1/2 years.

9 While he was in prison, he had no disciplinary problems.
10 He managed very well in the structure, contributed in major
11 ways to the prison. But the -- my finding was that his adult
12 life was significantly different than his childhood and
13 youth, and that he particularly had problems coping in the
14 community, but he did not have problems coping in a
15 structured environment.

16 Q: And do you have an overall finding?

17 A: My overall finding is in terms of his social behavior,
18 his -- his -- his behavior in a social environment is that he
19 -- he manages much better in a structured environment than in
20 an unstructured environment, like in the community where he
21 has multiple demands.

22 Q: Thank you for the summary, and I think we'll take a step
23 back and go over some of the background information. Did you
24 prepare a chart about the family that would be helpful for
25 your testimony?

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1 A: I did.

2 Q: Do you have a copy of that with you?

3 A: I do.

4 Q: Could you describe what it is?

5 A: What it is is -- let me make sure you have the same
6 version. Yep, that's it. This went through several
7 iterations.

8 I find it helpful to always look at a family tree of
9 some kind and, in this case, I just looked at the nuclear
10 family. The -- Stephen is the youngest by far in a family of
11 five children. His parents were mature when he was born.
12 His mom was 33 and his dad was 34. The -- and they had --
13 and they have the five children. His next oldest brother was
14 Jeff, who was about a year and a half older.

15 And then they were considered the younger family because
16 there was another cluster of children much older. The next
17 oldest was Billy, who was 8 and 1/2 years older than Stephen,
18 and Cindy, who was almost 11 years older than Stephen, and
19 Peggy, who was 12 years older than Stephen.

20 And the reason this is significant is that the older
21 children were out of the home when Stephen started showing
22 this personality change that he showed. He was eight years
23 old when Peggy and Cindy stopped living at home and he was 14
24 when Billy stop living at home and then Jeff left when he was
25 16 -- when Stephen was 16.

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1 Q: And did you prepare this chart yourself?

2 A: I did.

3 Q: And where did you get the information?

4 A: I got it from birth certificates and interviews
5 regarding the times when people left home.

6 MS. VANN: I'd move to admit this as Applicant's Exhibit
7 Number 31.

8 THE COURT: Any objection?

9 MR. ZELENKA: No objection.

10 THE COURT: Without objection, so admitted.

11 (WHEREUPON, Plaintiff's Exhibit Number 31, family tree
12 chart, was admitted into evidence.)

13 BY MS. VANN:

14 Q: Was there anything significant in your assessment that
15 -- about Stephen's birth and infancy?

16 A: I did notice that in his medical -- in the medical
17 records related to his birth, it was a normal delivery and --
18 but there were notations, medical notations, and this was
19 also in some of the testimony at trial that there was
20 possible intracranial damage and excessive vomiting to the
21 point that they recommended that Mrs. Stanko not have a tubal
22 ligation, which would have ended her childbearing, because
23 the term used on the -- in the medical record was that the
24 infant was in a precarious condition.

25 Q: And did any of your interviews reveal anything about his

1 infancy and how --

2 A: His older sister, Peggy, who was very involved in his
3 care because, as I mentioned, she was 12 years old when he
4 was born, said that he was sick a lot during the first year.

5 Q: Could you give us a description of Stephen's life while
6 he was in school?

7 A: Yes. He lived in a -- his family -- his father was in
8 the military and his father would -- he was in the Navy; so
9 he would be gone for months at a time, but they lived -- when
10 he was born, they lived on base in Guantanamo Bay, Cuba, in
11 an American community, and then they moved several times, but
12 by the time he was 8, they settled in Charleston. So most of
13 his childhood and youth was in Charleston.

14 But everything I saw in his record showed that he was an
15 exemplary student, well behaved, and a good performer. He
16 participated in recreational sports and organized things in
17 his community and was known as a -- a very sociable, very
18 likeable, very helpful child.

19 Q: Could you go into a little bit more detail about what
20 you've learned about the family relationships within the
21 immediate family?

22 A: The siblings I talked to said that his -- and he says
23 his mother was very nurturing. He felt close to his mother.
24 They were very respectful of their father and understood that
25 he had very clear expectations and, if you didn't live up to

1 those expectations, he basically -- one of the things he did
2 that they did -- that made them very uncomfortable was he
3 just wouldn't speak to them for days on end. And they wanted
4 to please him, and that created a good bit of stress for
5 them.

6 Excuse me. Let me look at my notes.

7 But for each of them as they became adults, they had
8 some degree of tension, although they still felt supported
9 and loved by their parents.

10 Q: And what was Stephen -- or what were the sibling
11 relationships like?

12 A: With Stephen and each sibling?

13 Q: Yes.

14 A: As I mentioned, with Peggy, his older sister, she had a
15 very caring relationship toward him. She did have a fairly
16 sudden break with her family. They did not support her
17 marriage, although it became a long-term marriage for her,
18 but because her father didn't approve of the young man that
19 she had chosen and so she became estranged from the family
20 for a while and has always lived at a distance from the
21 family physically, although they would visit for holidays,
22 and she stayed in touch, particularly through her mother.

23 Q: How old was Stephen when she moved away from the family?

24 A: She -- he was only 8 years old when she moved away.

25 Q: And how about his sister, Cindy?

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1 A: His sister, Cindy -- he was also 8 when she left. And
2 she decided when the family moved to Charleston to stay in --
3 in Illinois. She was still a teenager, but her father told
4 her if she could save -- get a job and save some money that
5 she could stay. And so she did. She did move back to South
6 Carolina though after Billy died.

7 Q: And could you talk a little bit more about Billy?

8 A: Billy was Jeff and Stephen's older brother and the -- he
9 was 8 and 1/2 years older than Stephen. So they -- they
10 didn't hang out or anything like that, but he was someone
11 that Stephen looked up to. And he moved out of the home but
12 stayed in the Charleston community and then had a very
13 serious accident which caused him to move back into the home
14 while he was rehabilitating from his injuries.

15 And at that point, he and Stephen became closer. They
16 played games together, chess and things like that, but
17 Stephen, in my interview with him, told me about an incident
18 in which he found Billy while he was in their family home
19 with a heroin needle between his toes passed out, and he
20 realized that he had a serious drug problem at that point and
21 decided not to tell his parents because he was afraid his
22 father would kick Billy out of the home.

23 So he was protective of Billy, but feels some guilt
24 about not having alerted the family at that point. The
25 family did know later that Billy had a drug problem.

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1 Q: We heard earlier today about Billy's death. Can you
2 discuss the significance of that in terms of Stephen?

3 A: It was a very traumatic death. The cause of death was
4 indeterminate. It seems to have been a murder. There was a
5 gun found by his burned body in a cabin that was burned down,
6 and the coroner's report says they couldn't rule out suicide,
7 but it was unlikely.

8 And so the family never knew who committed this -- this
9 murder. There was very little -- there was just no
10 information from the investigation. So they didn't have a
11 real resolution about what happened to Billy, but they also
12 were heartbroken about losing Billy because he was an
13 important member of their family and felt that they wished
14 that they could've helped him or done something to have
15 prevented it. So each person I talked to has obviously been
16 traumatized by that death.

17 Q: How did the family overall deal with Billy's death?

18 A: Well, after the initial outpouring of emotions, they
19 didn't talk about it much at all, and the neighbors and their
20 friends just knew that Billy had died in a fire. There was
21 never any discussion of what had happened or why, and they
22 didn't -- didn't pursue it. So it was an example of how the
23 family just doesn't talk about uncomfortable things or
24 negative things.

25 Q: And we met Jeff Stanko this morning. Could you talk

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1 just a little bit about his relationship with Stephen?

2 A: They were pretty close. They were considered the boys.
3 You know, they were the two younger ones. They shared a
4 room, as he testified. The -- he did move away when Stephen
5 was 16 and joined the military and, from that point forward,
6 he didn't live in the same community with his family.

7 He also had a marriage that his family -- his father
8 didn't support, and so Stephen didn't go to that wedding. He
9 -- Stephen was 17 when Jeff got married, and so Stephen told
10 me that he felt bad that he didn't go when Jeff was married.

11 Q: Could you summarize what Stephen's life was like as he
12 neared the end of high school?

13 A: He was in a very stable family. He had friends. He was
14 the only child living at home.

15 The other thing -- at the same time Jeff graduated,
16 Stephen's best friend, Eric, moved away. He had one friend
17 that he was -- he had lots of friends, but he had one friend
18 he was really close with, Eric, and his family moved to
19 Florida. And so he lost his friend, Eric, then too, but
20 Stephen was living home alone with his parents the last two
21 years of high school.

22 He was very involved in schools. The information I read
23 from teachers and principals was that he was in clubs. He
24 was a leader. He was a role model. The -- he was just an
25 exemplary student.

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1 Q: And what was his plan for after high school?

2 A: Well, he had always been in college preparatory classes,
3 and he was accepted to the Clemson University College of
4 Engineering, which is quite an accomplishment, but he had his
5 heart set on going to the Air Force Academy. And it was hard
6 to determine just what happened with that application, but he
7 didn't get accepted into the Academy.

8 And at that point, he just seemed to give up on going to
9 college. Now, his -- his brother and sister told me that the
10 father -- their father had told them that he wasn't able to
11 financially help them go to college, but you know, other --
12 and Stephen didn't seem to be inclined to work and go to
13 college. But at that point, he was starting to manifest some
14 behavior problems as he was nearing graduation.

15 Q: Do you know what other people in his peer group were
16 doing after high school?

17 A: Some -- most of them went to college. His best friend,
18 Eric, did, and his -- Ed Pouse [ph], his friend, went to West
19 Point to the -- to the military academy. Some of -- there
20 were some friends that went on to work like he did. He got a
21 job at Circuit City in sales, which fit his personality
22 really well. He was able to sell. And -- but he just gave
23 up on going to college.

24 Q: You've mentioned this, but could you talk a little bit
25 more about the potential injuries that he suffered from in

1 high school?

2 A: Well, the incident with the beer bottle happened
3 sometime in the spring of his senior year, and his mother
4 believed, according to the information she gave the -- for
5 the psychiatric evaluation that was done at Hall several
6 years later, that that was the point at which he started
7 exaggerating and lying, and she thought he lived in a fantasy
8 world at that point and that she had -- he had -- that's --
9 those were her words.

10 He began acting in grandiose ways and trying to impress
11 people and saying things that didn't make sense, and one
12 person described it as this. They said he was already really
13 accomplished. He was very popular. He had everything going
14 for him. Why would he need to inflate other people's view of
15 himself?

16 Q: Did he start having trouble financially?

17 A: He did. In his 20s, he had a series of sales jobs, and
18 the -- and then there came a point where he was just
19 overspending. He got into very heavy debt, and I don't have
20 precise dates on this. I just have information from the
21 records that at one point his parents had paid \$25- to
22 \$30,000 to cover his debts.

23 Q: Eventually, did Stephen end up being arrested for any of
24 the things that he was doing?

25 A: He did. The -- his -- the first arrest I noted was in

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1 1993 when he was 25. It was for breach of trust with
2 fraudulent intent and grand larceny. He took \$600 and a
3 laptop from the insurance company that he was working for is
4 my understanding of that offense, and he received probation
5 and was required to go to counseling.

6 Q: And did he go to that counseling?

7 A: He did.

8 MS. VANN: And, Your Honor, the records from that are
9 behind tab 6 in the social history records.

10 THE COURT: Okay.

11 BY MS. VANN:

12 Q: What sort of counseling did he receive?

13 A: He received counseling from a mental health counselor at
14 a community mental health center and a brief assessment by a
15 psychiatrist there. At intake, he reported that his problems
16 were -- that he self-reported that he exaggerated the truth,
17 that he had problems with self-esteem, and he was concerned
18 because he had a broken relationship with his parents. After
19 his parents bailed him out of the debt, they just sort of cut
20 him off because they didn't want to put up with that anymore.

21 And -- and he was having problems with his fiancée's
22 son. He had been dating -- he had dated several different
23 people, which is typical behavior for a 19 -- 20 -- early
24 20s, but he had been dating a young woman named Elizabeth
25 McLendon off and on for about four years -- well, about two

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1 years in 1993 when he first started getting in trouble.

2 And she had a son, but while -- so while they were at
3 the mental health center, the counseling tended to focus on
4 how he could build better relationships with her and her son
5 and didn't really address this tendency for lying or stealing
6 that he had, even though it was court ordered or it was
7 ordered as a condition of his probation.

8 And so the -- he did go to five of eight counseling
9 sessions, but it seemed to be somewhat off target for what
10 his core problems were.

11 Q: During his time on probation, did Stephen get into any
12 additional legal trouble?

13 A: Well, he -- one of the things he was ordered was to pay
14 restitution and he got behind on that and wasn't doing that.
15 He also went to Atlanta, which was a violation of probation,
16 and while he was there, he lived with someone and ended up
17 stealing from her. And at this point, he had actually
18 committed several acts of stealing or theft that -- that --
19 some of which he got in trouble for.

20 When he -- when he was in Atlanta, the person he stole
21 from called and reported him to the parole office and so he
22 called and turned himself in and, at this point, he said he
23 really did not want to be doing these things is what is
24 stated in the parole records. So he had some self-awareness
25 that he was doing these things.

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1 And the thing about the way he was stealing that was --
2 that didn't make sense is he would steal from people he knew.
3 It was -- and he was obvious that he was the one doing it and
4 it was obvious that he couldn't pay the money back. So he
5 was bound to get detected. It didn't seem to fit with the
6 intelligence that he had demonstrated early in his life. It
7 was a very irrational kind of series of acts.

8 So he was rearrested and then was released on community
9 supervision with the expectation that he would get another
10 psychiatric assessment. He did go to MUSC, but I don't have
11 the records for that. We just have reference to them that
12 Ms. McLendon made.

13 The -- and then that was in December of 1995 and then
14 just a few weeks later in February, he committed a violent
15 assault against Elizabeth McLendon.

16 Q: Was he incarcerated after that assault?

17 A: He was. He was sentenced to 10 years and served 8 and
18 1/2 years.

19 Q: Did Stephen receive a mental health evaluation after
20 that offense?

21 A: He did.

22 Q: And is that behind tab 7 in the records notebook?

23 A: It is, yes.

24 Q: What was the result of that evaluation?

25 A: It was a forensic evaluation. He was found competent to

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1 stand trial and that he was criminally responsible, and he
2 was given a diagnosis of a personality disorder.

3 Q: Did you review the records from Stephen's incarceration?

4 A: I did.

5 Q: Did he receive any mental health treatment while he was
6 incarcerated?

7 A: No. And he also didn't receive any treatment for having
8 been a domestic violence offender.

9 Q: And would that have been appropriate given the diagnosis
10 to do a mental health evaluation?

11 A: Yes, and given the nature of the crime.

12 Q: How did Stephen appear to function while he was in the
13 social environment of the prison?

14 A: He was remarkably adaptive. His -- the behaviors he was
15 showing in the community of the stealing or what people call
16 scams, he didn't -- he didn't do those in the -- in the
17 prison.

18 The -- he continued to be sociable, which he's always
19 been, and helpful, which he's always been. The -- he stayed
20 gainfully employed. He had a number of prison jobs as a
21 clerk, librarian.

22 He -- he writes a lot and so he wrote a lot about his
23 life in prison, and he managed -- he contacted a publisher
24 about some of the things he had written and he ended up
25 getting three chapters published. They -- they matched him

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1 with a criminal justice professor and he ended up getting
2 three chapters published in a textbook that basically give an
3 inmate's perspective on what it's like to be in prison.

4 The -- he had no violent encounters or episodes on his
5 behavioral records and, you know, he just seems to have been
6 appreciated by a number of the inmates and the -- the leaders
7 of the institutions as well. He was in four different
8 institutions.

9 Q: Do you have an opinion on why the prison environment he
10 was able to adapt so well?

11 A: He -- he just seems to really do better with clear
12 expectations and predictability in the environment. When he
13 has to take responsibility for solving even the everyday
14 problems of life, he seems to have challenges of getting it
15 all together, like he can't handle, you know, having a job,
16 having a home, getting food, transportation, all of the
17 things that are needed to sustain life at a reasonable level
18 and not an excessive level.

19 Q: Did Stephen ever engage in threatening behavior while he
20 was incarcerated?

21 A: No.

22 Q: Did he have any issues with his classification while he
23 was incarcerated?

24 A: He -- he did. He was -- he was convicted or I think
25 pled guilty to kidnapping, which under certain circumstances

1 is considered a sex offense, and so he was placed on the sex
2 offender registry and he -- he basically went to court to ask
3 that that be reviewed. And I did read court documents that
4 determined that he should not be on the sex offender registry
5 given the nature of the crime.

6 Q: At some point during his incarceration, did Stephen
7 begin preparing for his release?

8 A: He did. And there are a number of records where he
9 talks about what his expectations are regarding his release,
10 and they were remarkably unrealistic considering that he was
11 going to be released with a high school degree and a record
12 as an ex-inmate, but he had plans to earn his living by being
13 a writer and to live off of royalties from his writings, even
14 though he didn't have anything in print and the one thing
15 that he did have in print was in an academic book which
16 probably wasn't making very much money at all.

17 The -- he also proposed that he would be operating a
18 public education initiative to try to keep kids out of prison
19 and had a short proposal for what he wanted to do, but no
20 real logistical plan for how to do it. At one point, he
21 wrote to someone in the -- one of the managers of the
22 institution that he was going to be doing a lecture tour to
23 nine colleges in six states over a three-week period.

24 The -- earlier, he had written to South Carolina
25 Department of Corrections officials saying that he was going

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1 to have four books on -- on the shelves for sale within six
2 months at the time that he was writing that. So it was a
3 real fantasy about what he might be able to do when he got
4 out that was grounded in some visions that he had about what
5 he might like to do, but were not going to support him on a
6 day-to-day basis.

7 Q: How were Stephen's family relationships affected by his
8 conviction and first incarceration?

9 A: Well, the family was very traumatized by the fact that
10 he had committed a violent offense, and the -- they had
11 already had very estranged relationships with him anyway
12 because he had -- he had stolen from his parents at one
13 point. He had almost stolen from Cindy at one point.

14 They had tried to help him in a number of different
15 ways, including paying some of his debts. They were -- Cindy
16 had helped him get some jobs earlier. She went to court with
17 him at times. His mother, in particular, stayed in touch
18 with him. The -- they -- his parents had helped him type his
19 manuscripts when he was in college, but they didn't feel that
20 they could have him live with them.

21 They were concerned. And they also -- the family
22 dynamic is such that he should take responsibility. They
23 didn't seem to know how irrational his expectations were; so
24 they were placing these rational expectations on him to just
25 behave without knowing a lot of the details about what --

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1 what he thought he was going to be able to accomplish.

2 Q: And I think you just said that they -- the parents
3 helped type manuscripts while he was in college. Did you
4 mean --

5 A: I'm sorry. I meant when he was in prison.

6 Q: Okay.

7 A: Excuse me.

8 Q: Did any of his family relationships survive the prison
9 incarceration?

10 A: Well, to some extent, I guess they -- they all did. He
11 had limited communication. Well, his father wouldn't speak
12 to him. His father drove away when he came to the house to
13 get some things after the incarceration. Cindy had
14 terminated her relationship with him. His mother stayed in
15 touch to a limited extent, and he did reach out to Jeff and
16 Jeff did respond. And Peggy was living in California, a
17 great distance, but he had some email communications with
18 her.

19 Q: When was Stephen released from prison?

20 A: I believe it was July 30th, 2004.

21 Q: And how long was he out of prison before he was charged
22 with the crimes in this case?

23 A: About eight months and one week.

24 Q: So I would like to spend some time going through what
25 his life was like at that period of time. Where did he go

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1 after he was released from prison?

2 A: Well, he -- he had been very helpful to some inmates
3 while he was in prison and so we had some help from the
4 family members of other inmates. An inmate's father picked
5 up Stephen from the prison, which is not far from -- the one
6 he was in at that time is not far from Charleston, and he
7 drove him to his parents' house. They refused to let him
8 stay there.

9 So his sister, Cindy, drove him to Myrtle Beach, where
10 he stayed in a motel. And the reason he went to Myrtle Beach
11 was that another inmate's family lived there, and they had a
12 possibility of giving him some work to do. And then also
13 through this inmate's family, he did end up moving into
14 someone's home and helping with the care of an elderly family
15 member.

16 Q: And could you describe what his life was like after he
17 was released?

18 A: Well, he was under community supervision, intensive
19 community supervision at first, with the South Carolina
20 Probation, Pardon, and Parole Commission, and so he had to
21 report to a parole officer. He -- at first, he was on home
22 detention, which meant that, except for work, he was supposed
23 to stay at his home, and he couldn't travel. He couldn't --
24 couldn't go anywhere.

25 He had to pay for his probationary supervision. He had

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1 to be looking for work, and he was on the sex offender
2 registry. Even though he had the court order saying that he
3 should not be on the sex offender registry, the Probation and
4 -- the PPP organization had listed him as a sex offender
5 because they didn't have the court order. Apparently, there
6 was a problem with that. So he had to hire an attorney to
7 help get that straightened out. He was in the process of
8 doing that.

9 Q: Did Stephen try to find a job at this time?

10 A: He did apply for jobs, but most jobs required him to
11 report that he had committed a felony and he was concerned
12 that their checking the sex offender registry was hurting his
13 chances of getting jobs because he had a -- he wasn't able to
14 get jobs.

15 Q: Was he making efforts to comply with the supervision?

16 A: He was. He was noncompliant later, but at first he was
17 and he was in touch with his parole officers.

18 Q: Did he at some point become overwhelmed by these
19 different things that were going on?

20 A: In October, he sent an email to Jeff in which he said
21 that he was scared that he was going to face things that he
22 couldn't handle and was -- in it, he talks about his
23 disappointment that all the things he wanted to do he wasn't
24 going to be able to do because one thing depended -- led to
25 another.

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1 And he asked for help from Jeff. Jeff lived in another
2 state and, in order for him to go there, he would have to be
3 accepted by -- he would have to get permission from South
4 Carolina and be accepted into North Carolina for probation,
5 and being on the sex offender registry was apparently
6 creating problems for that.

7 He did contact the Department of Vocational
8 Rehabilitation, which is known for helping people with
9 challenges to find jobs. And so they scheduled a
10 psychological assessment for him, but I didn't see any record
11 that that assessment actually occurred.

12 Q: Did Stephen eventually move in with Ms. Laura Ling?

13 A: She did. He did. He -- he went to the library where he
14 could get access to a computer there to look for jobs, and
15 that's where he met her was at the library where she worked.
16 And they became involved and around Thanksgiving, in
17 November, they moved in together.

18 Q: And what was Stephen doing around this time to support
19 himself?

20 A: Well, he was starting to do what everyone called scams
21 again. He was representing himself to be a lawyer or a
22 paralegal and offering to do services for people. The --
23 there were several different things that he did in the period
24 from about November up until April when this happened.

25 Q: In January of 2005, did anything of significance occur?

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1 A: He -- he was in touch with his sister, Peggy, and
2 threatened to -- or he threatened to commit suicide, which
3 caused Ms. Ling to reach out to his sister, Peggy, and his
4 brother, Jeff, for help.

5 He had been doing fairly well. There was -- there is
6 correspondence that indicates that he and Ms. Ling had a lot
7 of affection and he was -- and testimony of Ms. [REDACTED]
8 Ling indicates that he was contributing to the household. He
9 was doing the kinds of things that a family member would do.

10 But in January, he started to show some problems and he
11 -- the -- as a result of his having threatened to commit
12 suicide, Ms. Ling and Jeff and Peggy had a series of emails
13 that they exchanged for trying to figure out a way to help
14 him. He was concerned because he was in arrears with
15 Probation, Pardon, and Parole, but at that point he was very
16 dependent on Ms. Ling and Jeff to try to help him solve
17 problems.

18 Q: Did Ms. Ling do anything to attempt to help him resolve
19 some of these problems?

20 A: She did. She had -- she applied to put him on her
21 health insurance through her employer and, in order to do so,
22 she had to state that he was her common-law husband. She
23 seemed to have great affection for him and was trying to help
24 him and realized that he had -- that he had serious problems.
25 They also -- Stephen called and left a message with a

1 therapist, Louis Murden, and the therapist tried to call him
2 back, but they never really established a treatment
3 appointment for assessment or treatment.

4 Q: Could you describe what Stephen's life was like in the
5 months between January and March of 2005?

6 A: He was continuing these schemes that just -- that were
7 obviously going to lead to his detection and his getting in
8 trouble because he was defrauding people who knew him and who
9 he -- who were in the community he was in. They knew where
10 he lived. You know, they -- it was obvious he was going to
11 get caught.

12 Again, that is not consistent with his intelligence that
13 he would be doing these things that are so transparent. It's
14 the same thing he did before that had gotten him into such
15 serious trouble before and yet here he was repeating it
16 again. He seems to -- this -- his doing this said to me that
17 he seemed unable to anticipate consequences because anyone
18 could see that he was going to get in trouble.

19 The -- Ms. Ling called Jeff in March to say that she was
20 getting more concerned because there were people at the
21 library who were coming in to say they wanted their money
22 from him and she -- that's when she realized things were
23 getting serious in terms of what was going on with him. And
24 so there were a number of things that were converging at that
25 point.

1 Q: And can you describe the few weeks leading up to the
2 crime, the end of March and into early April of 2005?

3 A: The -- there were -- at trial, there were three people
4 who testified. Connie Price called about his deceiving her
5 into thinking that he could do some legal work for her.
6 Steve Lee suspected that Stephen was not doing the work that
7 he said he was doing. He got in touch with Stephen about
8 that. And another person named Don McAllister.

9 So all of these fraudulent schemes were about to become
10 -- become known in some way. He also was in arrears with his
11 probation and, again, dealing with disappointment that his
12 vision of having royalties or something, other things that he
13 was hoping to have done were not going to get done.

14 Q: Based on your evaluation, what are some of the themes
15 you would describe from the months leading up to the crime?

16 A: Well, Stephen was very unprepared for community life and
17 for dealing with the stressors. The problems that had gotten
18 him into prison the first time had never really been treated.

19 And even though we had adjusted well to prison, he was
20 not equipped to manage -- manage the kinds of things that it
21 takes to just live an ordinary life because of his
22 unrealistic expectations and his problems with doing these
23 transparent schemes in ways that just didn't make sense
24 because he didn't seem to anticipate the consequences.

25 So he had these multiple stressors. He had the ongoing

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1 stigma of being an ex-offender, but also being on the sex
2 offender registry. His life in the community was very
3 unpredictable. He wanted to go be with his brother, but he
4 couldn't. And he was in this affectionate relationship with
5 Ms. Ling, but it was unpredictable because of the trouble he
6 was getting into.

7 He was having trouble finding a job. The -- he was --
8 had unreliable income from the odd jobs he did have that were
9 legitimate jobs. He was appealing to his family, but there
10 was very limited communications he had with his family. Even
11 though Jeff and Peggy were caring, they were at a distance
12 and there was very little that they could do to help him in a
13 concrete way.

14 So the -- he was -- basically, there were a number of
15 stressors converging on his life.

16 Q: Did your evaluation lead to any themes or any
17 description of his functioning and his abilities kind of
18 throughout his life?

19 A: Well, throughout his life, there was a major change
20 somewhere in late adolescence that he -- while he adjusts in
21 many ways in the community -- he's likeable, he forms
22 relationships, he can do things, he can be helpful, he can
23 live in a family -- he has these maladaptive behaviors that
24 seem to be persistent and repetitive and even though he asked
25 for help and is aware of them, he doesn't seem to be able to

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1 make -- he just keeps repeating them, particularly the scams.

2 And the -- but when he's in a structured environment,
3 he's exceptionally capable. He is able to -- there aren't as
4 many demands on him when, you know, life is more predictable
5 where you don't have to try to make as many decisions.

6 So one of my most obvious observations is that he's
7 really smart, but he does things that are really not smart at
8 all, and it doesn't make sense.

9 Q: Was he getting any mental health treatment that would've
10 helped him to overcome some of these issues?

11 A: I didn't see anything in the record that showed that he
12 was actually treated for what his issues were.

13 Q: Going back to the specific referral question -- and you
14 probably covered this, but I wondered if you could just give
15 us a final summary. How did his life and family history
16 impact his ability to handle the stressors that you
17 identified in 2004 and early 2005?

18 A: Well, we have to look at how he adapted to this social
19 environment where the stressors were the demands of
20 independent community living, the living up to his -- the
21 expectations that he had of being a successful person and
22 that his family had, dealing with the stigma, the trouble
23 with the law, everything. The way he coped has to be seen
24 through the lens of how he has these grand expectations of
25 what he can accomplish that are simply irrational.

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1 And the -- so that's kind of where it starts with his
2 feeling disappointed. He has these repetitious inclinations
3 to steal without concern for the people he's taking it from,
4 and an inability to pay it back and an obvious transparency
5 that he's going to get discovered.

6 So he has impaired planning for reality, for dealing
7 with it. So the -- he's -- everything is through that lens
8 of not having the right skills.

9 He was able to use social support to the extent that it
10 was available, but the -- his social support network, which
11 included Ms. Ling and Jeff and Peggy, were totally unprepared
12 to deal with what he was faced with -- with what he was
13 facing.

14 He had these -- this problem too with the impulse
15 control that wasn't very manifest, because it -- even though
16 it had happened with Ms. McLendon, people didn't report that
17 he was real moody or threatening in ways that would've
18 predicted that he might've been violent. No one saw that
19 coming.

20 And he just was poorly equipped to deal with all of
21 these stressors, the barriers that he had.

22 MS. VANN: Thank you.

23 Court's indulgence.

24 No further questions.

25 Thank you, Dr. Andrews.

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BY MR. ZELENKA:

Q: Dr. Andrews, how are you today?

A: Good.

Q: We met in one of these proceedings many, many years ago; isn't that correct?

A: We did.

Q: Approximately how long have you been representing or participating in social work assessments for individuals on death rows in South Carolina or in the United States?

A: Thirty years.

Q: Okay. And have you received awards from certain organizations for your work assisting individuals on death row?

A: Specifically for doing mitigation work?

Q: Yes.

A: If I did, I don't recall it. I mean I've received a number of awards in my career. So the -- I don't, and I've been in a number of national conferences --

Q: Okay.

A: -- when they happened.

Q: Have you written about social work assessments for individuals on death row?

A: Yes. I've written some articles to help social -- social workers are often involved in doing mitigation

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1 investigations or expert testimony, and I've written articles
2 about that. I also co-authored a book on working with the
3 families of people who face the death penalty because that's
4 a lot of what we do.

5 Q: Okay. Why did you do that? Why did you decide to take
6 up your time to write those articles?

7 A: Because, as a social worker, I'm always concerned with
8 how to prevent problems, and by going deep on understanding
9 what may have led to problem behavior, we often can find
10 clues to what may prevent things. There are always these
11 questions of what if this had happened or what if that had
12 happened, and that helps us to develop interventions that
13 will create stronger families and stronger communities, which
14 is our ultimate mission.

15 Q: Do you have an opinion on the propriety of the death
16 penalty?

17 A: You mean -- by propriety, you mean whether it's correct
18 or not or morally correct?

19 Q: Yes.

20 A: I have a religious belief that -- that redemption is
21 important and so the death penalty should not be imposed.

22 Q: Okay. What is your theme about Mr. Stanko, if you had
23 to summarize it?

24 A: I would say it just doesn't make any sense for someone
25 so smart to do such stupid things, and that his violent

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1 actions are not predicted by his social history.

2 Q: Okay. Yet you agree his violence, at least on two
3 occasions, spanned over a number of years; isn't that
4 correct?

5 A: I'm not sure I understood that question. His violence
6 on two occasions spanned over a number of years? Can you --
7 can you --

8 Q: No.

9 A: Can you rephrase that?

10 Q: Let me ask it a different way.

11 A: Yes.

12 Q: When was his first incarceration for the kidnapping?

13 A: That was back in -- the offense happened in 1996.

14 Q: Okay. And when did the incident occur that sentenced
15 him to death row?

16 A: 2005, April 2005.

17 Q: Okay. And that was essentially two separate incidents
18 --

19 A: They were.

20 Q: -- that Mr. Stanko was involved in at that particular
21 time?

22 A: Right.

23 Q: With a series of different stressors involved in all
24 those incidents?

25 A: Actually, they were similar in the incidents leading up

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1 to both of those that were nine years apart.

2 Q: Okay. Let's go back to the first incident then.

3 Describe what occurred and what he was sentenced for
4 involving the kidnapping situation?

5 A: You mean describe the crime?

6 Q: Yes.

7 A: I may have to look at notes, but it was --

8 Q: Please feel free.

9 A: -- a fairly sudden assault in a domestic -- in his home,
10 in the home they shared. As I recall it, it was an assault
11 in which he attempted to -- he tied her up, attempted to kill
12 her with chemical cloths, and then moved her around the house
13 several times, took the rags out, and was having a
14 conversation with her and then -- and then left.

15 Q: Okay. Did you read her testimony at trial?

16 A: I did.

17 Q: In this particular trial?

18 A: Uh-huh.

19 Q: Is that where you got your information --

20 A: I did.

21 Q: -- from?

22 A: That's where I got it.

23 Q: Did you ever speak to Stephen about what occurred on
24 that occasion?

25 A: I didn't in detail, not on the assault itself. He did

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1 talk about his relationship with her and that they had been
2 close and that she continued visiting him after the assault
3 and after he went to prison for having assaulted her.

4 Q: Okay. And what did he tell you led up to that assault
5 on that day?

6 A: I don't recall what the -- I don't recall --

7 Q: Okay.

8 A: -- what it was or what happened.

9 Q: Well, you spoke of the importance of social assessments
10 is to get accurate information about major life experiences;
11 is that correct?

12 A: That's right.

13 Q: But you don't recall what led up to that major event or
14 that major life experiences; is that correct?

15 A: Well, it was similar in that he was engaging in the
16 scams. She knew about the scams, and she -- he knew that he
17 was going to get in trouble. And you know, he said some
18 things like he -- I remember him saying that he didn't want
19 her to get in trouble too, but that was -- I didn't take that
20 -- I mean I didn't take that very seriously because what he
21 had done was so serious. The -- it -- I think it had to do
22 with her awareness and his being threatened that she might
23 turn him in.

24 Q: Okay. And what did he do after the incident? Did he
25 leave?

1 A: Yes, he did.

2 Q: Did he try to escape?

3 A: Yeah. I mean, well, yeah. He went to a place where --
4 to Augusta where he had lived before.

5 Q: Okay. Did you do a written report summarizing your
6 opinions as a result?

7 A: No. I mean I have notes, but no.

8 Q: Okay. With respect to the next incident that involved
9 the death of Laura Ling, how did he describe that to you?

10 A: I didn't talk to him about the death of Laura Ling
11 because I was looking at the -- the stressors that were
12 building up until that time.

13 Q: Okay. Why did you not talk to him about that major life
14 experience?

15 A: Because I was talking -- I talked to him about his
16 relationship with her, but when it comes to state of mind at
17 the time of crime, there were other people who were -- had
18 assessed that and were assessing that and that wasn't within
19 the scope of what I was doing. So I did not spend much time
20 talking to him about that. I didn't spend any time talking
21 to him about that.

22 Q: So you didn't think it was important to find out why he
23 killed her?

24 A: Well, he said -- he said that he had this -- they were
25 fighting and he had the -- the -- that in the course of

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1 fighting that a cigarette had burned him and then he didn't
2 know what happened after that or all hell broke loose after
3 that or something like that.

4 Q: All hell broke loose after that?

5 A: Uh-huh.

6 Q: Okay. So he did recall something about fighting; is
7 that correct?

8 A: Yes.

9 Q: Okay. He didn't pass out? He didn't forget? He
10 recalled all hell broke loose?

11 A: That's how it started, yes.

12 Q: Okay. Now, with respect to his relationship with his
13 family, how would you summarize that again?

14 A: At what point? At the time that this crime occurred? I
15 would say that it was -- it was broken with his father. His
16 father had cut him off.

17 It was -- with his mother, he communicated with her
18 occasionally, but there was not much she could do to support
19 him and he didn't ask her for much help. He seemed to treat
20 that with some delicacy.

21 He had tried to get help from Jeff and wanted to live
22 with Jeff, but was unable to do so. And he had been
23 communicating with Peggy, who was very devastated by the
24 crimes he had committed before, but wanted to do what she
25 could to help them and to help Laura help him. And so she

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1 had communicated with Ms. Ling about their family history and
2 some things that she thought might be helpful to Ms. Ling.

3 Q: Just so I'm clear I understand this, when you say his
4 father cut him off, wasn't his father helping him prepare the
5 books that he was writing?

6 A: He did, but he didn't communicate with him. He didn't
7 -- he didn't give him guidance. He didn't do -- he didn't
8 really interact with him.

9 Q: Okay. And did that continue basically until his
10 father's death? There was no further communication?

11 A: I -- as far as I know, that's the case, but I didn't
12 communicate -- I didn't -- like I said, I didn't do the
13 assessment after the time of the crime.

14 Q: Okay. You gave an opinion that he -- he manages better
15 in a structured environment than in an unstructured
16 environment?

17 A: That's right.

18 Q: And that's based upon his ability, I assume, in the
19 South Carolina Department of Corrections to essentially be a
20 success; is that --

21 A: That's right.

22 Q: Is that correct?

23 A: Uh-huh.

24 Q: And is that based upon your opinion that when he's not
25 in that structured environment, he lies, he steals, he tries

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1 to cheat other people?

2 A: With not having had any therapy or guidance or any
3 intervention to help him manage these impulses that he has,
4 yes, he is at risk of doing that.

5 Q: And those impulses are to lie, cheat, and steal from
6 other people?

7 A: That's correct. And under extreme pressure, to commit
8 violence.

9 Q: Which he has done since age 19?

10 A: I can't pinpoint the age, but at some point around his
11 senior year or soon after.

12 Q: Okay. And at the time when he is about to get caught
13 for that, he's committing a violent act; is that correct?

14 A: You mean this act against Ms. Ling and --

15 Q: Well, it seems like in the incident in the '90s and the
16 incident in 2004, there are indications he was about to get
17 caught?

18 A: Uh-huh.

19 Q: He was on probation. He was risking going back into
20 prison?

21 A: Uh-huh.

22 Q: And at that time, he commits a violent assault upon a
23 female; is that correct?

24 A: That's correct.

25 Q: Each of those times?

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1 A: That's correct.

2 Q: And then what does he do? He flees? And how did he
3 flee the first incident? Whose vehicle did he take? Do you
4 recall?

5 A: I don't know that.

6 Q: How did he flee the second incident? Whose vehicle did
7 he take?

8 A: I understand he stole a vehicle, yeah.

9 Q: He took Laura Ling's vehicle?

10 A: Well, he took Ms. Ling's at first.

11 Q: Right?

12 A: At first, yes.

13 Q: And then he committed another crime?

14 A: Uh-huh.

15 Q: Correct?

16 A: Uh-huh.

17 THE COURT: Ma'am, I need a yes or a no, if you can.

18 THE WITNESS: Yes, sir.

19 THE COURT: Just to make it clear for the record.

20 THE WITNESS: Yes.

21 MR. ZELENKA: I'm sorry?

22 THE WITNESS: He was just asking me to say yes or no,
23 which I'm sorry I wasn't.

24 MR. ZELENKA: I apologize, Judge.

25 THE COURT: I asked her to say yes or no as opposed to

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1 an uh-huh or huh-uh.

2 THE WITNESS: Sorry.

3 THE COURT: I just want the record to be clear, please.

4 THE WITNESS: I'm sorry.

5 THE COURT: That's okay. Thank you.

6 BY MR. ZELENKA:

7 Q: When you testified that he had been discussing suicide

8 --

9 A: Yes.

10 Q: Where did that information come from?

11 A: That came from -- there was a series of emails, and I
12 may need to check to know exactly which one it was in, but
13 apparently it was precipitated by Ms. Ling notifying his
14 sister -- either his sister or his brother.

15 Q: Okay. Was there any evidence he actually attempted
16 suicide?

17 A: Not to my knowledge.

18 Q: Okay. But did you discuss that with Stephen?

19 A: I -- I don't recall if I did do that.

20 Q: Okay. Well, I probably should've asked this question
21 earlier. How often have you met with Stephen?

22 A: I've met with him twice.

23 Q: Approximately how long were each of your meetings?

24 A: Probably an hour and a half each, and much of my talk
25 with him focused on his younger life.

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1 Q: Okay. Was anybody present during those meetings?

2 A: Lindsay Vann.

3 Q: Pardon me?

4 A: Lindsay Vann.

5 Q: Okay. Were you given any direction as far as the type
6 of inquiry you could have with him at that time?

7 A: No.

8 Q: What are the major themes of Stephen's life that you
9 would want this judge to know?

10 A: That -- that he was a capable, rational person and
11 raised to do the morally responsible things, to live a
12 morally responsible life, but that something happened and he
13 became very irrational. I think his mother summarized it
14 best in the Hall psychiatric records, and I would want him to
15 look particularly at what the mother reported to the
16 psychiatrist who was assessing him for that when she said --
17 and I can probably pull it out. It's all in here.

18 THE COURT: What tab is that?

19 THE WITNESS: That is tab 7, and there's an interview
20 that's done with the mother. If you'll give me a minute,
21 I'll find it for you, sir.

22 MR. ZELENKA: May I approach, Your Honor? I just want
23 to see what page she's referencing.

24 THE COURT: Yes.

25 BY MR. ZELENKA:

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1 A: Okay. Here it is. Gosh, they don't have page numbers.
2 I can read it to you and then I can show you which page it
3 is. It's handwritten. It's on the social work assessment
4 and it's just before -- it's on the last page before a cover
5 letter dated 18th of January, 2006.

6 And in it, it says age when the problem first appeared,
7 17. History of the problem. According to mother, patient
8 started lying compulsive in 1985 after he was struck on the
9 head with a full beer bottle. He lived in a, quote, fantasy
10 world, end quote, would steal household possessions and
11 become very grandiose. Patient lived in a fantasy life at
12 school and a regular life at home.

13 The -- and she says he was very highly strung at the
14 time of the incident. This would have been the assault on
15 Ms. McLendon. She described the patient as being hyper and
16 then very quiet, like two different people, and he could be
17 argumentative. These were his mother's descriptions.

18 Q: Okay.

19 A: For consideration during psychiatric assessment.

20 Q: And she described him as being very argumentative at
21 that time; right?

22 A: At the time, yeah, and that was relating to the incident
23 that he was showing -- I guess he was showing signs of being
24 argumentative then.

25 Q: Okay. You are also aware that Stephen had written a

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1 book? In fact, you've got his book right in front of you.

2 Have you read the book?

3 A: I read the chapters that he wrote.

4 Q: Okay. And what was the emphasis of the portions of that
5 book that he wrote?

6 A: It was a --

7 Q: What point was he trying to get across?

8 A: -- fairly simple description of what life is like, the
9 daily life in prison, which the chapter titles that he wrote
10 are -- it was written for, I think, undergraduate criminal
11 justice students so that they would know what life was like,
12 and it's called -- there's a chapter called "The Prisoner's
13 Narrative", a chapter called "The Prison Environment", and a
14 chapter called "Surviving in Prison", by Stephen Stanko.
15 It's in a nine-chapter book called *Living in Prison*.

16 Q: Was he describing prison as a peaceful place or a
17 violent place?

18 A: He was -- he -- basically, he was describing the order
19 of the prison and some of the threats that are there and the
20 way people could cope with it.

21 Q: Well --

22 A: And he also talks about what you lose by having to go to
23 prison, which is consistent with his goal of trying to teach
24 young people not to go to prison. He talks about how you
25 lose contact with your friends, your family, and are very

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1 isolated because you've been to prison.

2 Q: And prior to the incident, he was working on another
3 book with Mr. Cruz?

4 A: I didn't talk to him about the details of his books
5 because he talks a lot about a lot of the writing. He does
6 writing. He writes for hours every day, and I didn't go into
7 all the different books that he was writing.

8 Q: Okay.

9 MR. ZELENKA: Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. ZELENKA: No further questions.

12 Thank you, Doctor.

13 THE COURT: Any redirect?

14 MS. VANN: No further questions of this witness, Your
15 Honor.

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

17 THE WITNESS: Thank you.

18 THE COURT: Ms. Vann?

19 MS. VANN: At this point, the applicant rests, Your
20 Honor.

21 THE COURT: All right. Anything from the State?

22 MS. SCRANTOM: Yes, Your Honor. The State is prepared
23 to call Mr. Tristan Shaffer to testify.

24 THE COURT: Okay.

25 MS. VANN: We object to calling Mr. Shaffer.

1 We submitted a bench memo to Your Honor yesterday. We
2 do not believe that his testimony is relevant given that the
3 issue of deficient performance has already been determined by
4 the finding by this Court that initial PCR counsel were --

5 THE COURT: Wait a minute now. Deficient performance
6 was already determined? I determined that they weren't
7 qualified per the statute to handle the post-conviction.

8 MS. VANN: Yes, Your Honor. And the Robertson v. State
9 case says that a finding of lack of qualifications is per se
10 deficient performance, and so that issue has already been
11 decided by this Court's earlier ruling. And now the only
12 question is whether the evidence that has been presented at
13 this hearing would change the outcome of the original
14 hearing.

15 THE COURT: All right. Over defendant's objection, I'm
16 going to allow him to testify. I read your bench memo.

17 MS. VANN: Thank you, Your Honor.

18 THE COURT: But your objection is so noted for the
19 record.

20 MR. ANDERSON: Can we take, like, a five-minute recess,
21 Your Honor?

22 THE COURT: Yes, we can.

23 (WHEREUPON, there was a break in the proceedings from
24 3:44 p.m. until 4:01 p.m., after which the proceedings
25 resumed as follows)

1 THE COURT: All right. Is the State ready to proceed?

2 MS. SCRANTOM: Yes, Your Honor. Before calling Mr.
3 Shaffer and due to the unique procedural posture of this
4 case, I would request on the record a waiver of the attorney-
5 client privileges for -- for purposes of this PCR hearing.

6 Under the PCR statute, because we are here on the
7 origination of an ineffective assistance of PCR counsel claim
8 essentially, we believe the PCR statute would apply, which
9 would waive the attorney-client privilege for purposes of
10 this hearing.

11 And also, under Benny [ph] v. State, the waiver would be
12 allowed to the extent necessary for Mr. Shaffer to address
13 the allegations of ineffective assistance of counsel that
14 have been brought by nature of the procedural posture of this
15 case.

16 THE COURT: Ms. Vann?

17 MS. VANN: Complicit with our prior objection, we do not
18 believe that the attorney-client privilege has been waived
19 because we do not think it's relevant to this proceeding. So
20 it's not necessary to waive the privilege in order for him to
21 defend against the ineffective assistance of counsel
22 allegations.

23 THE COURT: So it's your opinion that he can defend
24 against it without waiving it?

25 MS. VANN: Yes, Your Honor. We --

1 THE COURT: By filing the PCR, does that in and of
2 itself waive it?

3 MS. VANN: No. Because it's only waived to the extent
4 that it's necessary to defending it. And because the only
5 question for deficient performance is the qualifications of
6 counsel, that's the only thing that is necessary to defend
7 against an allegation that they performed deficiently.

8 THE COURT: I mean I -- I'm here to determine the
9 prejudice side of it.

10 MS. VANN: Yes, Your Honor.

11 THE COURT: And I understand your argument that it's
12 deficient per se pursuant to Roberts.

13 Ms. Scrantom?

14 MS. SCRANTOM: Your Honor, we maintain that, again,
15 because we're here because there's been an allegation of
16 ineffective assistance of initial PCR counsel and because the
17 Supreme Court has ordered a prejudice determination, flowing
18 from the presentation that was put forth by initial PCR
19 counsel, of which Mr. Shaffer falls into that category, that
20 based on the PCR statutes and the way that they operate and
21 based on the main opinion that the attorney-client privilege
22 would be statutorily waived simply because the allegations
23 were made against him.

24 Now, I understand that the current PCR application that
25 lists the claims that have gone forward this week relates

1 back to trial counsel, but that PCR application can only be
2 considered by this Court this week because the Supreme Court
3 has already given credence to the allegations of ineffective
4 assistance of PCR counsel. And so I think the statute has to
5 attach that way.

6 THE COURT: And I would believe it would do -- it would
7 as well.

8 MS. VANN: I mean our argument is that because deficient
9 performance only hinges on the qualifications of counsel,
10 that is the extent that we have waived on the deficient
11 performance prong.

12 And then the only question under prejudice is whether
13 the information that was admitted here today and yesterday at
14 this hearing would change the outcome of -- if this had all
15 been presented at an initial PCR --

16 THE COURT: Right.

17 MS. VANN: -- would the outcome have been different?

18 I don't think Mr. Shaffer has anything to offer on that.
19 That's a determination for Your Honor to make.

20 The Supreme Court has ruled that you can't call an
21 expert to testify based on -- or to his opinion on the
22 ultimate legal question, and the ultimate legal question is
23 would the outcome have been different. And so I don't think
24 there's anything for Mr. Shaffer to testify about and there's
25 no waiver of privilege.

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1 THE COURT: Well, I'm going to allow him to testify.

2 I'm going to allow him to testify.

3 MS. SCRANTOM: Thank you, Your Honor. The State would
4 call Tristan Shaffer.

5 THE COURT: But your objection is noted for the record.

6 MS. VANN: Thank you, Your Honor.

7 THE COURT: All right.

8 THE BAILIFF: Place your left hand on the Bible.

9 THE CLERK: Do you solemnly swear or affirm that the
10 testimony you are about to give is the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Please be seated and then state
14 your name and spell it for the record.

15 THE WITNESS: Tristan Shaffer. Shaffer is S-h-a-f-f-e-
16 r. Tristan is T-r-i-s-t-a-n.

17 TRISTAN SHAFFER, being first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SCRANTOM:

21 Q: Good afternoon, Mr. Shaffer. Could you please give the
22 Court the benefit of your professional background?

23 A: I have been practicing since November of 2009, primarily
24 criminal practice. Initially, for about a year, I was a
25 public defender in Richland County. After that, I was an

1 appellate defender for approximately a year.

2 Then I went into private practice. In private practice,
3 I did a variety of things, but primarily criminal and
4 especially for the next several years primarily criminal
5 post-conviction and appeal work.

6 Q: What -- how many post-conviction cases have you been
7 involved in?

8 A: I would estimate 150.

9 Q: And is that as post-conviction counsel and not someone
10 against whom a PCR has been alleged?

11 A: That's correct.

12 Q: And when were you officially appointed to represent Mr.
13 Stanko in his PCR action in Georgetown County?

14 A: I believe it was the day of the hearing whenever the
15 judge actually signed the order. We had asked -- prior to
16 that, we had a status conference. I believe it was around
17 August or September where we asked and the judge basically
18 said he wasn't going to sign something until the hearing.

19 Q: And was that hearing in April of 2015, to your
20 recollection?

21 A: I believe the actual hearing, yes. The actual
22 evidentiary hearing was.

23 Q: And were you working on his case prior to being
24 appointed by the judge?

25 A: Yes. I started working with Axelrod and Associates in

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1 -- I went -- I was full-time as of June of 2014. Before that
2 for approximately a month or two, I had been dealing with
3 stuff related to his case, but in June of 2014, I was full-
4 time. And part of what Stuart wanted me to do -- Mr. Axelrod
5 wanted me to do is actually help out on the Stanko case.

6 Q: And from the time you became involved in that case on to
7 the hearing, who made up the full PCR team that was
8 representing Mr. Stanko?

9 A: It would've been Stuart Axelrod was first chair, Bobby
10 Frederick would have been second chair, and I would have been
11 helping out and during the hearing, I guess, officially I was
12 third chair.

13 Q: Is it fair to say that you were working on this case for
14 a full year basically leading up to the hearing?

15 A: That's fair to say or most of a full year, yeah.

16 Q: So would all of your work in this case be accurately
17 reflected on the timesheets that you had submitted to
18 Indigent Defense?

19 A: No. The timesheets that I actually submitted to
20 Indigent Defense were from -- I believe that was only from
21 the time that I was actually appointed to get paid whenever
22 Bobby Frederick -- Bobby decided or had moved to North
23 Carolina and was winding down his practice, and I believe
24 that -- I don't recall exactly when that was, but I believe
25 it was 2016 and 2017, early 2017 maybe.

TRISTAN SHAFFER - DIRECT BY MS. SCRANTOM

1 Q: So is it fair then to say that a large percentage of
2 your work on this case was pro bono or off the books, so to
3 speak?

4 A: That's correct.

5 Q: Okay. And did you take a part in the drafting of the
6 final application for this 2015 PCR hearing?

7 A: I believe I was the person who typed it. Obviously,
8 there would've been input from Stuart Axelrod and Bobby
9 Frederick.

10 MS. SCRANTOM: Your Honor, may I approach the witness?

11 THE COURT: Yes.

12 BY MS. SCRANTOM:

13 Q: Mr. Shaffer, I believe you have been presented with what
14 has been marked for identification as State's Exhibits 2, 3,
15 and 4. Do you recognize what those documents are?

16 A: Yes. State's Exhibit 2 would have been the -- it's
17 titled Third Final Amended Application for Post-Conviction
18 Relief. It would have been the application that was the most
19 recent at the time that we actually did the evidentiary
20 hearing.

21 State's Exhibit 3 appears to be a transcript of the
22 record from the evidentiary hearing we did in April between
23 April 27th and April 28th of 2015.

24 And State's Exhibit 4 appears to be a list of exhibits
25 from that hearing.

TRISTAN SHAFFER - DIRECT BY MS. SCRANTOM

1 Q: And were you present for the generation of essentially
2 all three of those materials?

3 A: Yes.

4 MS. SCRANTOM: Your Honor, at this time, I would move in
5 as evidence State's Exhibits 2, 3, and 4.

6 THE COURT: Any objection?

7 MR. ANDERSON: Your Honor, we would just renew the
8 previous objections already made.

9 THE COURT: So noted. Admitted.

10 (WHEREUPON, State's Exhibit Number 2, amended
11 application for PCR, was admitted into evidence.)

12 (WHEREUPON, State's Exhibit Number 3, 2015 PCR
13 transcript, was admitted into evidence.)

14 (WHEREUPON, State's Exhibit Number 4, 2015 PCR exhibit
15 list, was admitted into evidence.)

16 MS. SCRANTOM: Thank you, Your Honor.

17 BY MS. SCRANTOM:

18 Q: Mr. Shaffer, how would you describe your role as part of
19 the PCR team leading up to the 2015 hearing?

20 A: I was -- I went from being somewhat involved to very,
21 very involved. For the hearing, I was -- I was involved in
22 pretty much every aspect of the case. At least certainly
23 within the last couple of months of the -- between January
24 and the time of the hearing, all of 2015, I would have said I
25 was involved in every aspect of the preparation.

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1 Q: Was there something that sparked the change between you
2 being somewhat involved and then, as you put it, being very,
3 very involved?

4 A: No. I would say that the case had been pending for a
5 long, long time. I can't even recall how many second chairs
6 were on the case at one point or another. Stuart -- I
7 believe Mr. Axelrod had been on the case since basically the
8 very beginning or close to the very beginning. I know Bobby
9 got in the case in 2013 after Andrew Rittener [ph], who had
10 previously -- I think it was Andrew Rittener who was
11 previously the attorney ahead of him. So I would say that
12 initially I wasn't -- I was sort of playing catch up because
13 there was a lot to catch up on.

14 Q: And do you feel as though you recall the allegations
15 that went forward in 2015 to a good degree?

16 A: I think that I recall some of them to a good degree.

17 Q: Were you part of the collaboration between Mr. Axelrod
18 and Mr. Frederick in deciding which claims would be
19 presented?

20 A: Yes, I was. At least later on in the process, I
21 certainly was.

22 Q: Could you explain to the Court what you felt were the
23 main allegations that were going forward in 2015?

24 A: I think that the biggest one or the biggest two would
25 have been the issue involving whether or not an involuntary

1 -- I mean a voluntary manslaughter charge had been given.

2 The -- that was sort of -- that was Stuart's idea. He saw
3 them from reviewing the transcript. He was lead counsel. I
4 think that he put more stock in that issue than anything
5 else. I think that that was probably the main issue going
6 forward.

7 Q: And what do you recall as the factual basis for that
8 claim?

9 A: The -- one of the experts testified that this whole
10 event, the death, started whenever the victim actually
11 slapped Mr. Stanko and caused his cigarette to go into his
12 eye and basically, at that point, he saw red, which he went
13 into a rage.

14 Q: Was that raised as an ineffective assistance of counsel
15 claim?

16 A: Yes.

17 Q: Was it a guilt phase or a sentencing phase claim?

18 A: It would've been a guilt phase claim.

19 Q: Was there a claim that was related to that about a
20 provocation mitigator?

21 A: Yes. I tacked that on. I think that was my idea after
22 Stuart suggested the other one that we go ahead and argue
23 that. There was some not-great case law out there for us,
24 but I think that it was worth arguing. I didn't think it was
25 our major issue going forward though.

TRISTAN SHAFFER - DIRECT BY MS. SCRANTOM

1 Q: What -- how would you describe the investigation that
2 went into that small grouping of claims?

3 A: Well, I'll say that the -- the good thing about the
4 voluntary manslaughter ineffective assistance of counsel
5 claim is is that it sort of made up on the record as a legal
6 issue. It's based off the transcript.

7 I don't think that there would ever be any valid legal
8 reason not to assert that claim. You know, yeah, we knew
9 that they were going to argue an evidentiary issue or you
10 guys were going to argue an evidentiary issue, but I think
11 that that was the great thing about that. So it didn't
12 require a whole lot of outside factual investigation to make
13 out.

14 The other issue that I thought was probably the next
15 strongest would've been the issue about -- basically, we were
16 asserting that Mr. Diggs' strategy, his underlying strategy,
17 was just -- was ineffective. Not just ineffective, but I
18 mean absurd. That basically that there was no valid reason
19 to sit there and argue with the evidence that he had that --
20 that there was even a possibility of a not guilty by reason
21 of insanity defense. The evidence he had was all antisocial
22 behavior.

23 Q: And so you raised the claim that trial counsel was
24 ineffective for presenting a defense of not guilty by reason
25 of insanity; right?

1 A: That's correct.

2 Q: And was everybody on board with the pursuit of that
3 claim?

4 A: I think that -- I think that we were all on board except
5 I think maybe Bobby. Bobby Frederick had some reservations
6 about it, I believe, and I think that he thought that it was
7 sort of -- went against an issue that he previously -- was
8 sort of his baby, which would have been the issue about
9 whether or not the -- there was abandonment with Pam Crawford
10 and whether or not Pam Crawford would've been alive to
11 testify.

12 And so I know that he was on board with it, but I don't
13 think that he was -- he -- I think that he thought that we
14 should prioritize the Pam Crawford issue over that issue.

15 Q: Do you feel that you brought appellate experience to the
16 table when you were preparing for this PCR hearing?

17 A: Yeah. I certainly had more appellate experience than
18 Stuart did.

19 Q: How might that have affected your preparation for the
20 claims going forward?

21 A: I basically look at PCR hearings as a chance to make a
22 record so that you can argue something on appeal later. I
23 think that, in many situations, persuasion and things like
24 that and trying to make the most persuasive argument probably
25 isn't the most effective way to do a PCR or try to persuade a

1 judge.

2 Q: Did you also pursue in 2015 a claim that trial counsel
3 was ineffective for failing to object to the characterization
4 of the applicant is an evil person?

5 A: . Yes, I did.

6 Q: What was the basis for that claim?

7 A: We were basically asserting that the -- the entire
8 defense -- it sort of worked with the -- the argument that --
9 that Bill Diggs' strategy -- and I'll call it his strategy
10 because I'm pretty sure it was in the testimony at this PCR
11 hearing and I'm pretty sure that it was -- everyone would
12 pretty much say it was Bill Diggs that did it, but his
13 strategy essentially demonized Mr. Stanko throughout the
14 trial.

15 It was -- first of all, it was -- there was not enough
16 evidence. I mean there was only evidence of antisocial
17 behavior, and it wasn't not guilty by reason of insanity
18 because of that, but by presenting this quasi not guilty by
19 reason of insanity defense, he ended up basically presenting
20 a whole bunch of really bad evidence for mitigation.

21 Q: You had mentioned earlier a series of claims related to
22 Pam Crawford. What was the basis for those claims to your
23 recollection?

24 A: I believe that Pam Crawford initially was involved in
25 the SLED investigation whenever -- doing something. I can't

1 recall if she was, like, profiling or something like that,
2 but she assisted SLED, at least initially, in their
3 investigation.

4 Then I think that Mr. Diggs agreed to allow Ms. Crawford
5 to do the evaluation on Mr. Stanko because of the fact that
6 -- well, he agreed to it. We suspected that it had something
7 to do with timing involving the -- you know, I think that
8 some news outlet covered this. I've forgot what it was, if
9 it was *Dateline* or what, but that's what -- we suspected
10 that. I'm not sure if we ever actually firmly established
11 that or anything.

12 Q: Did you also raise the claim in 2015 that trial counsel
13 was ineffective in failing to investigate and present
14 mitigating evidence at the sentencing phase?

15 A: Yes, we did.

16 Q: Did you --

17 A: We raised it in the application, yes.

18 Q: Do you recall any investigation into that claim?

19 A: I recall -- I recall communications with Drucy Glass at
20 some point or possibly just communications about
21 communications. It may be -- this -- some of this may have
22 predated me, to be honest with you. I don't really recall
23 exactly what took place, but I believe that there was some
24 looking into it. I don't know how extensive they went into
25 it, but it was my understanding that there wasn't a whole lot

1 more we could have done. But that being said, I don't know.

2 I don't know if we actually -- how much investigation was
3 done on that at that point.

4 Q: Were you aware that Mr. Axelrod had been granted funding
5 for Drucy Glass to do a social history investigation?

6 A: Yes.

7 Q: And to your recollection, was that done or completed by
8 the time you got involved in this case?

9 A: I'm pretty sure it was done. Now, if there's documents
10 out there that counter that, then I may be wrong. I recall
11 one of the earliest meetings discussing that, and I recall
12 certainly speaking to Dale Davis a lot about that, but I
13 don't really recall -- I really don't even recall speaking to
14 Drucy Glass about any of that.

15 Q: Do you recall coming across any new mitigating evidence
16 that you didn't recognize from your study of the record?

17 A: I don't think that we had any at that time, but I really
18 don't -- I mean I -- if there was something, I may be wrong,
19 but I don't recall seeing anything, no.

20 Q: Do you recall that you raised the claim in 2015 that
21 trial counsel was ineffective in failing to properly
22 investigate matters concerning the applicant's past mental
23 health history?

24 A: Yes.

25 Q: What would the basis have been for that claim?

1 A: I think that that was one of the earlier claims that was
2 raised. So by the time we hit the -- we filed State's
3 Exhibit 2, there had been multiple applications raised, and I
4 think that some of those -- I recall being told basically to
5 keep certain allegations in there, and that may have been one
6 of them that I was told specifically to keep in there. I
7 don't recall one way or another for sure, but that may have
8 been one of them that had been in a previous allegation and
9 -- or previous application and I was told to keep it in
10 there.

11 Q: Do you recall the retention of Dr. Susan Knight to
12 testify at the 2015 PCR?

13 A: Yes.

14 Q: And what was the purpose for reaching out to Dr. Knight?

15 A: The initial purpose in reaching out to her I'm not
16 exactly sure. The reason I wanted her to testify though is
17 because of the fact that I wanted to -- to some degree bridge
18 the gap between experts on not guilty by reason of insanity
19 in South Carolina and the judge because even though there
20 were two -- I think there were -- they had two different --
21 yeah. I think there were two different experts that
22 testified at trial that he was insane at the time. I think
23 that the goal was to get Susan Knight to basically say those
24 people weren't necessarily following the right definition or
25 to try to convince the judge of that.

TRISTAN SHAFFER - DIRECT BY MS. SCRANTOM

1 Q: And by those people, who do you mean?

2 A: I mean Thrasher and the guy from Georgia, who I can't
3 think of his name right now.

4 Q: So am I to understand that one of the main claims you
5 felt was pursued in 2015 was pushing the definition of the
6 NGRI defense that was used in terms of not only -- in terms
7 of the evidence that was available as far as Mr. Stanko's
8 previous diagnoses?

9 A: That was one of the main claims, that and the -- those
10 were probably the two biggest claims that were the most
11 heavily litigated. I just thought that -- and there are
12 several allegations that somehow touched on Bill Diggs'
13 defense.

14 I just thought Bill Diggs' defense was awful, and it
15 basically didn't amount to -- even under the best situations,
16 didn't amount to not guilty by reason of insanity -- I'm
17 surprised the judge even charged it -- and basically just
18 assassinated Mr. Stanko's character for the jury.

19 Q: And so the evidence that was put forward at the PCR
20 testimony -- did you feel that that dovetailed the claims
21 that you had raised?

22 A: Yes. I believe that it did that and, you know, I guess
23 a lot of the -- a lot of the traditional mitigation stuff was
24 in part to some degrees raised, but not really emphasized
25 during the trial. I mean there was some mitigation that was

TRISTAN SHAFFER - DIRECT BY MS. SCRANTOM

1 entered into the trial, but it really wasn't touched -- I
2 mean it really wasn't the central focus and really undercut
3 by Mr. Diggs' defense.

4 Q: What all would you have reviewed to prepare for the
5 previous PCR hearing?

6 A: I'm sorry. Say that again?

7 Q: What all would you have reviewed and studied essentially
8 to prepare for the previous PCR hearing?

9 A: There was a lot of documentation we would have reviewed.
10 I believe we saw all of the discovery. I think we saw all of
11 Bill Diggs' notes. I think we saw a lot of the emails that
12 were sent back and forth. There was obviously the trial
13 transcript. There was a lot of stuff.

14 There was, in physical terms, I would say a bookshelf
15 full of notebooks probably four feet -- and there was
16 actually a bookshelf in the Axelrod office full of stuff for
17 Stanko that was probably, you know, four feet tall and four
18 feet wide with three or four shelves that had all of the
19 binders full of information on this case.

20 So there was a lot of information. Whenever I reviewed
21 it though, it wasn't necessarily in the best order. We put
22 it in order later on, but I think that I probably would have
23 reviewed -- I think I probably looked at just about
24 everything they had, if not everything they had. I certainly
25 tried to look at everything that they had.

TRISTAN SHAFFER - DIRECT BY MS. SCRANTOM

1 Q: And do you recall who all testified in 2015 on your
2 behalf?

3 A: We had Dale Davis. The -- I can't think of the second
4 chair's name off the top of my head.

5 Q: Mr. Kelly?

6 A: Yeah, Mr. Kelly. Gerald Kelly. We had Susan Knight
7 there, which I think was a proffer. We had Joey Savitz
8 there. Mr. -- Dr. Thrasher testified, and I believe Bill
9 Diggs testified on -- the State called Bill Diggs.

10 Q: And what was the purpose of Dr. Thrasher's testimony?

11 A: To be honest with you, I can't recall exactly the
12 purpose. I think to some degree there was a lot of back and
13 forth trying to get him to admit the fact that everything was
14 -- everything he relied upon in giving his opinion was
15 antisocial behavior.

16 Q: And do you recall that he opined at trial that Mr.
17 Stanko met the definition of insanity?

18 A: Yes.

19 Q: At the time of the Ling crimes?

20 A: Yes.

21 Q: And so is it fair to say that you called him at PCR to
22 challenge that legal definition in conjunction with the
23 facts?

24 A: That was certainly one of the major objectives. I don't
25 recall if there were any other reasons that we would've

1 called him.

2 Q: So with the volumes of notebooks that you reviewed in
3 preparation for the last PCR hearing, do you recall finding
4 anything that sparked you to seek out additional mental
5 health evaluations for Mr. Stanko?

6 A: There was discussion about having an additional mental
7 evaluation. I don't think that -- I'm not sure if we
8 actually wanted to go there or not, just because I don't know
9 if it necessarily would have -- the indication I had, I don't
10 think it necessarily would've added to it, but I don't know.
11 I know that we at least had discussions about it.

12 Q: Did you ever have any discussions regarding prison
13 adaptability and whether that was presented at trial?

14 A: I can't recall a hundred percent. I believe that there
15 may have been. I had talked with a prison -- on a different
16 case about a prison adaptability specialist or expert. So I
17 know that that might have been in -- it probably was in my
18 mind.

19 So I would think that I would've thought of that, but I
20 can't recall any specific discussions about hiring a new
21 expert. I know that there was some indication about him at
22 the -- during the sentencing phase, I believe, that there was
23 some indication about how he got along well in prison. It
24 may have even been in the guilt phase, to be honest with you
25 because -- and the -- the guy's name escapes me who testified

1 from Georgia, but I believe that he may have brought it up.
2 He certainly brought it up in the sentencing phase, but he
3 may have brought it up in the guilt phase as well about how
4 psychopaths generally do well in prison.

5 Q: So you identified that type of evidence in the trial
6 record of this case already in existence; is that correct?

7 A: Yes. There was some -- there was some evidence on that
8 in the trial, I believe.

9 Q: Did you feel that factually this was a difficult case to
10 take to PCR?

11 A: I think that every capital case that I've seen recently
12 is not great to be in court with. That being said, I
13 actually didn't think that this -- I think that there were
14 some strong issues that -- like I said, the voluntary
15 manslaughter charge. I thought that that was a very strong
16 issue and that wasn't hard to make out factually.

17 Q: Did you feel like there were any claims that went
18 forward in 2015 that you wanted to develop but were unable to
19 do so?

20 A: I would never say that, like, you couldn't do better
21 because you can always do better. At the time, I wasn't
22 thinking that -- I probably wasn't thinking that at the time.
23 I think during the course of the hearing, I probably felt a
24 little bit bad about not further developing or not pushing
25 the further development of the Pam Crawford issue because I

TRISTAN SHAFFER - DIRECT BY MS. SCRANTOM

1 think that Bobby had a lot of faith in that issue, and I
2 don't think we made that issue out the best in the world or
3 we -- we probably didn't develop that very well, but at the
4 time, I wasn't thinking of it.

5 Could there have been other things? I mean I'm not
6 saying that there couldn't because you can always do better.

7 Q: What is your understanding of the current procedural
8 posture of this case?

9 A: My understanding is that it was remanded and for a new
10 PCR hearing. Initially, I thought that there was already,
11 like, a finding. I guess there's a finding to some degree of
12 deficient performance, but I haven't read the orders. So I
13 don't want to sit there and speculate.

14 Q: But are you aware that the outcome of the hearing that
15 you did has not been decided on appeal?

16 A: Yes, I am.

17 Q: Okay.

18 MS. SCRANTOM: I beg the Court's indulgence.

19 THE COURT: All right.

20 MS. SCRANTOM: No further questions at this time.

21 Thank you, Mr. Shaffer.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. ANDERSON:

25 Q: Do you mind if I call you Tristan?

TRISTAN SHAFFER - CROSS BY MR. ANDERSON

1 A: That's fine, if I can call you Hank.

2 Q: You may.

3 Tristan, I believe earlier you said you've been involved
4 in about 150 PCRs?

5 A: That's a rough guess, but yeah.

6 Q: Were any of those death penalty PCRs?

7 A: No.

8 Q: Have you ever been involved in a death penalty trial?

9 A: No, I have not. Closest I've ever been, I did two
10 appeals that used to be that were originally trial capital
11 cases, but they found for life.

12 Q: Would you agree with me that a death penalty case is a
13 little bit of a different animal?

14 A: Absolutely.

15 Q: And I believe now you're doing public defender work in
16 Laurens County?

17 A: And Greenwood, yes.

18 Q: Okay. You're not currently working on any death penalty
19 cases there, are you?

20 A: Yes.

21 Q: You are?

22 A: Yeah. I have a William Ryan Looper.

23 Q: Okay.

24 A: It's a fairly new case. The -- it's nowhere near trial.
25 It's a year away from trial at least.

TRISTAN SHAFFER - CROSS BY MR. ANDERSON

1 Q: And certainly -- how long have you had the case?

2 A: About six months.

3 Q: So it's still a year away from trial. So would you say
4 it's certainly beneficial to have 18 months to prepare?

5 A: Yes.

6 Q: Would you say it's beneficial to have 18 months to get
7 your experts lined up and get a social historian lined up and
8 things like that?

9 A: At least, yes.

10 Q: And you got involved in this case pretty late?

11 A: That's correct. I would've gotten involved -- probably
12 the first real work I did on the case would have been in --
13 on June 2nd of 2014, and that's based off of an email that was
14 sent to me that I just looked at earlier. I don't think that
15 I did anything else before that.

16 Q: So you -- and I'm not trying to diminish your role, but
17 so I mean you basically just -- Bobby was kind of on the way
18 out and so you kind of stepped in to help Bobby or take his
19 position?

20 A: Well, no. Bobby wasn't on the way out. Bobby wasn't on
21 the way out until after the hearing. So I took over Bobby's
22 position after I left Axelrod and Associates. And around the
23 time I left Axelrod and Associates, Bobby began to wind down
24 his practice. And I can't remember at what time he actually
25 was relieved, but at some point, he just said, hey, I want

TRISTAN SHAFFER - CROSS BY MR. ANDERSON

1 off the case because he moved to North Carolina and wanted to
2 shut down his law practice. So at that point, the judge
3 actually appointed me to get paid on it.

4 Q: I'm sure that made Mr. Axelrod happy.

5 A: Well, no. I was actually -- I was gone from Axelrod and
6 Associates; so it made me very happy.

7 Q: I'm glad somebody was happy.

8 Now, I believe you testified just a few minutes ago that
9 y'all called basically five witnesses, Joseph -- or Joey
10 Savitz I believe you said?

11 A: Yes, sir.

12 Q: And he worked at Appellate Defense?

13 A: That's correct.

14 Q: You were familiar with him by doing work at Appellate
15 Defense?

16 A: Yeah. He worked there with me for about two months.

17 Q: Did you direct him or did Mr. Axelrod?

18 A: I believe I took Mr. Savitz.

19 Q: All right. And then you also called Gerald Kelly?

20 A: Yes.

21 Q: Who took that direct?

22 A: I think -- I think Mr. Axelrod took that.

23 Q: All right. You called Dale Davis?

24 A: Yes.

25 Q: Did you do that one or did someone else?

TRISTAN SHAFFER - CROSS BY MR. ANDERSON

1 A: I believe that Stuart did that one. Mr. Axelrod did
2 that one.

3 Q: All right. And then you proffered the testimony of
4 Susan Knight?

5 A: That's correct.

6 Q: It was not admitted?

7 A: That's correct.

8 Q: And then Dr. Thrasher was called?

9 A: Yeah.

10 Q: Who did that one?

11 A: I believe Stuart Axelrod did.

12 Q: All right. So you took Mr. Savitz and possibly the
13 proffer of Susan Knight and then that was it?

14 A: I believe that's correct. I was very involved in the
15 preparation for Dr. Thrasher, but I don't think that I
16 actually questioned Dr. Thrasher.

17 Q: Now, did y'all ever look into any potential juror bias?

18 A: There was an issue. They -- before I got involved, they
19 wanted to raise an issue involving change of venue, which I
20 think we even put in our application. I'm not sure. I can't
21 recall for certain if it actually made State's Exhibit 2 or
22 not, but I do think that we -- I know that at that point we
23 were raising a venue issue involving pretrial publicity on
24 the case.

25 So there was that issue that at least got put into

TRISTAN SHAFFER - CROSS BY MR. ANDERSON

1 there. I don't think that there was -- we had a whole lot
2 that would support that at the time, the venue issue.

3 So I guess that touches on your question. I don't think
4 we directly raised anything about juror bias.

5 Q: And I'll rephrase my question.

6 A: Okay.

7 Q: Did y'all talk to any individual jurors?

8 A: No, not while I was there. We did not.

9 Q: Are you aware that a juror later indicated that he knew
10 one of the arresting officers and may have known one of the
11 doctors and maybe his daughter had a class with the victim,
12 Ms. Ling's daughter?

13 A: Yeah. I did not find -- or I didn't know about that
14 until recently.

15 Q: Do you think that should've been something y'all should
16 have raised if you had known?

17 A: I would have raised that had I been aware of it.

18 Q: And, of course, Mr. Axelrod's office is in, I guess,
19 Myrtle Beach?

20 A: Yes.

21 Q: I believe you already testified you went through the
22 record on appeal; so certainly, you knew who all the jurors
23 were, could have contacted them if you thought it was
24 important?

25 A: Yes. We could have. I mean we had the ability to do

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1 so. I'm not -- I'm really not sure exactly why we did not.

2 I don't think that there was necessarily any -- I think that
3 the main reason that they would've contacted jurors is in
4 pursuit of that change of venue issue.

5 Q: Now, at no point in time did y'all do any research into
6 calling possibly someone from the Department of Corrections?

7 A: No, we did not.

8 Q: And I believe you testified that you had seen a seminar
9 or used someone or thought about it, but then, for one reason
10 or another, you didn't follow up on it?

11 A: I've used -- I have consulted prison adaptability
12 experts -- a prison adaptability expert in another case prior
13 to this. I believe it was not directly on prison
14 adaptability because it wasn't a death case, but it was -- I
15 used someone who does that kind of work to consult on another
16 issue; so I would have been aware of that. That is one of
17 the main issues that is traditionally raised in mitigation
18 cases.

19 Q: And in mitigation, that's one of the things?
20 Adaptability?

21 A: Yes.

22 Q: And, of course, you would agree with me that the short
23 amount of time he was in the Georgetown County Detention
24 Center is nowhere near the amount of time that he was in
25 Turbeville and then later McDougall? You would agree with

TRISTAN SHAFFER - CROSS BY MR. ANDERSON

1 that, wouldn't you, Tristan?

2 A: I would -- I would believe so. I don't have the dates
3 with me, but I wouldn't disagree with you.

4 Q: I mean if I told you that he was in Turbeville -- well,
5 he was locked up on that kidnapping from 1996 to 2004.
6 Certainly, those eight years of records would be a lot better
7 than anything that could have been presented from Georgetown
8 County?

9 A: I think that it would certainly be more thorough on
10 prison adaptability, yes.

11 Q: Do you know if Axelrod or Bobby or did you ever reach
12 out to the warden at McDougall or the warden at Turbeville?

13 A: Not to my knowledge.

14 Q: Did you all ever talk to the chaplain or one of the
15 lieutenants there at either facility?

16 A: No, not to my knowledge.

17 Q: Nothing prevented you from doing that?

18 A: No, nothing prevented us from doing it.

19 Q: Did you all ever talk about -- I mean I know y'all
20 called Dale Davis, but did you ever talk about calling a
21 doctor, such as Dr. Arlene Andrews, to this case to help put
22 together a program?

23 A: I don't believe I -- and I'm sorry if I sound like I'm
24 avoiding your question, but I'm not exactly sure what Dr.
25 Arlene Andrews was -- I didn't listen to all of that

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1 testimony; so I don't know what she's a doctor in.

2 Q: All right. I'll back up and ask it a different way.

3 You read the record on appeal, the trial from the first
4 case?

5 A: Yes.

6 Q: And I believe you testified that you looked at emails
7 and different letters and things like that?

8 A: That's correct.

9 Q: All right. So you were aware that the person that they
10 tried to use in the Georgetown case got in very, very late,
11 maybe a month before the trial started? Are you aware of
12 that?

13 A: Yes.

14 Q: Obviously, you're working on a death penalty case now.
15 You've got 18 months or so. It would certainly be helpful to
16 get a social worker in, an expert that can talk about a life
17 history and things like that, involved early? Would you
18 agree with that?

19 A: Yes, I would agree that it's important to have someone
20 involved early.

21 Q: And Mr. Axelrod had this case for how long before you
22 got involved? A couple years?

23 A: Yeah. At least -- I don't know exactly, but I would say
24 four or five years, something like that.

25 Q: Had plenty of time to get a social worker involved, an

TRISTAN SHAFFER - CROSS BY MR. ANDERSON

1 expert evolved to do a life history, a life plan?

2 A: I mean, yeah. I mean he would've had time to do that.

3 Q: And that was not done in this case?

4 A: I don't believe so or not -- not that came up. We
5 didn't really have a life plan or anything like that whenever
6 I was involved.

7 Q: Do you know whether Mr. Axelrod ever called his brother,
8 Jeff?

9 A: I'm not sure if personally he ever called him. There
10 was some discussion that somebody had tried to reach out to
11 the family, and I don't recall who it was.

12 Q: Did you ever try and reach out to the family?

13 A: No. Not personally.

14 Q: Are you aware that Jeff came from Atlanta and testified
15 today?

16 A: I found that out today.

17 Q: And that was not done in y'all's PCR; is that right?

18 A: No.

19 MR. ANDERSON: Your Honor, may I have the Court's
20 indulgence --

21 THE COURT: Yes, sir.

22 MR. ANDERSON: -- just for a minute?

23 BY MR. ANDERSON:

24 Q: I believe earlier you mentioned you talked with Drucy
25 Glass?

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1 A: I --

2 Q: Do you know whether or not an invoice was ever submitted
3 for her work?

4 A: I did not personally talk with Drucy Glass. I believe
5 that -- I know that they had been in contact with Drucy
6 Glass. Bobby --

7 Q: Tristan, I was going to say, who was that? Who is they?
8 Bobby?

9 A: They, Bobby and Stuart.

10 Q: Okay?

11 A: Axelrod and Mr. Frederick.

12 Q: Okay. Did you ever see any investigative summaries from
13 her work?

14 A: If I did, I do not recall it.

15 Q: You raised an ineffective assistance claim. What did
16 you do to show any prejudice of those claims?

17 A: On which one?

18 Q: On any of them. What should trial counsel have done
19 instead?

20 A: I think that prejudice on the voluntary manslaughter.
21 There's plenty of case law that says that if you -- if
22 there's no lesser included, then -- I mean if you fail to
23 request a lesser included, it can be prejudicial. I think
24 that the Court can make that determination without any help.
25 I don't think that you would have needed to call anybody to

1 support that claim.

2 The claim about defaming your client or making your
3 client look bad I also don't think you necessarily needed to
4 call an expert for because I mean -- or anyone to -- you
5 know, if you get up there and call your client Hannibal
6 Lector, I'm pretty sure the Court can assume that there's
7 prejudice. I mean there's other PCR cases that are
8 successful without actually calling a witness to say, well,
9 we would've voted differently had he not said this horrible
10 thing about his client.

11 Q: I believe the Attorney General's Office asked you
12 specifically did you recall anything that caused you to seek
13 out any additional mental health experts. Did you ever
14 follow up with Dr. Gur and say, hey, Dr. Gur, would you have
15 done anything different in this case? Would you have liked
16 to have any more information in this case?

17 A: I don't recall ever following up with any doctor.

18 Q: Okay.

19 A: I mean so I don't know if -- I really don't recall. So
20 I don't recall if there was any desire to. I don't know why
21 I would at this time, you know. Obviously, I haven't --
22 like, I'm certainly the least familiar with this case of
23 every -- every lawyer in this room right now. So it's
24 possible that there was a reason for me to and I forgot or
25 it's possible that I didn't think that there was a reason for

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1 me to at the time.

2 Q: So certainly, based on that answer, you didn't see any
3 need to follow up with -- with Dr. Wu?

4 A: No. I don't recall any reason to follow up with Dr. Wu
5 at this time.

6 Q: Or none of the other doctors that were called by Mr.
7 Diggs?

8 A: Yeah.

9 Q: Other than Dr. Thrasher?

10 A: I know that there was an argument about whether or not
11 we got into Dr. Wu's -- or whether or not Dr. Wu was able to
12 adequately -- adequately be cross-examined on the methodology
13 he used. I know that we raised that as an issue, but I don't
14 think that I --

15 Q: You didn't actually call Dr. Wu as a witness?

16 A: No, we did not. And I don't think that there was --
17 yeah. I don't know if it necessarily would've been
18 successful. So I don't know, to be honest with you, one way
19 or another. It may not have been. It may have been on the
20 list of issues that we didn't have a whole lot of faith in.

21 MR. ANDERSON: One more moment, Your Honor.

22 That's it right now, Your Honor. Thank you.

23 THE COURT: Any redirect?

24 MS. SCRANTOM: No, Your Honor.

25 THE COURT: Sir, you may step down.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you.

3 Anything else from the State?

4 MS. SCRANTOM: Nothing else, Your Honor. May Mr.

5 Shaffer be released from his subpoena?

6 THE COURT: Yes. Mr. Shaffer, you're free to go. Thank
7 you.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Ms. Scrantom, let me ask you this question
10 after hearing his testimony.

11 MS. SCRANTOM: Yes, Your Honor.

12 THE COURT: What part of his testimony went to the
13 prejudice prong here that I should be considering?

14 MS. SCRANTOM: Your Honor --

15 THE COURT: Because what I heard primarily, after
16 hearing his testimony, I think Ms. Vann is probably right on
17 this thing because everything went from his testimony -- what
18 I was concerned about is -- and when you raised the attorney-
19 client issue, I didn't hear anything specifically that went
20 to attorney-client, but I've heard for the last two days and
21 I knew coming into this how very smart the defendant is here,
22 an IQ of 140+, which -- you know.

23 And then you raised the attorney-client issue today, of
24 which I didn't hear anything related to attorney-client in
25 Mr. Shaffer's testimony, but I had a concern that maybe

1 because of how smart he is, maybe there's an attorney-client
2 issue that he directed everything that was going on in his
3 PCR. And to then assert attorney-client privilege and scream
4 prejudice, so to speak, would've been highly inappropriate.
5 Does that make sense?

6 MS. SCRANTOM: It does, Your Honor. Part of the reason
7 for presenting Mr. Shaffer today would be to look at the
8 claims that were raised in 2015.

9 THE COURT: Right.

10 MS. SCRANTOM: And we believe that there's some overlap
11 in the claims that were raised then and the claims that are
12 raised now. And now I understand that looking at the
13 prejudice prong, you have to look at how they were pursued,
14 and that's the question before you.

15 THE COURT: Well, in as far as looking at -- I mean it's
16 in essence what we talked about here at sidebar. I mean it's
17 a PCR within a PCR, so to speak.

18 And by -- pursuant to Robertson, which says if they're
19 not qualified per the statute, Ms. Vann is exactly right.
20 That's deficient performance per se. It doesn't say it's a
21 deficient -- deficiency. It's deficient performance per se.

22 So in essence, any performance is deficient. I'm
23 assuming that's -- that's my reading on that case. Anything
24 they did was deficient, which bleeds over into the prejudice
25 side of it. But for that deficiency, there's a reasonable

1 probability that the outcome would have been different.

2 Isn't that what -- how you show prejudice?

3 MS. SCRANTOM: Yes, Your Honor.

4 THE COURT: Okay?

5 MS. SCRANTOM: Yes, Your Honor.

6 THE COURT: So -- which in turn had the State -- excuse
7 me -- the applicant here in essence do an entire PCR again.

8 MS. SCRANTOM: Yes, Your Honor.

9 THE COURT: Which would lead me to believe that maybe I
10 disregard everything that Shaffer and Axelrod did and they
11 not piggyback on it, so to speak, because the presumption is
12 everything they did was deficient. Do you understand what
13 I'm saying?

14 MS. SCRANTOM: Yes, Your Honor, and part of the
15 difficulty of where we are procedurally is that the appeal
16 has not even been briefed from that last hearing.

17 THE COURT: From the prior PCR.

18 MS. SCRANTOM: From the prior PCR. And so part of the
19 Supreme Court's order that brings us here today, from my
20 understanding, is that they are going to consider that 2015
21 hearing and those claims that were raised on appeal in tandem
22 --

23 THE COURT: In addition.

24 MS. SCRANTOM: -- with the claims that are raised today.

25 And so part of that, we felt in our presentation for

1 this prejudice hearing we couldn't -- some of what was done
2 before is relevant insofar as there is overlap maybe in the
3 claims that were presented. Maybe they were worded a
4 different way, but trial counsel from 2006 already testified
5 once at PCR and has testified again this week and the
6 mitigation investigator testified once in 2015 and she
7 testified again yesterday.

8 And so to that extent, we do feel that it's relevant
9 what they did, to see if those claims overlap. And again,
10 part of our difficulty is that this is all going up on appeal
11 on the same record and so it's hard to -- I think it --
12 points separate out what might be needed to have a full
13 record since we have a PCR plus a PCR within a PCR all going
14 up together. And so that would be why we proffered that
15 testimony today.

16 THE COURT: Well, even if I had ruled that I'm not going
17 to consider it at all, I would have allowed you to proffer
18 the testimony to hear what was going to be said.

19 MS. SCRANTOM: The ultimate question, we believe, is
20 whether the result of the 2015 proceeding would have been
21 different had the claims that were presented this week been
22 presented in 2015.

23 THE COURT: Right.

24 MS. SCRANTOM: And we do believe that's the ultimate
25 question for you to decide.

1 THE COURT: Yeah. The ultimate question is whether or
2 not -- you're right. Whether or not the outcome of the 2015
3 PCR would've been different but for their errors.

4 MS. SCRANTOM: Yes. And the error being the
5 qualification issue specifically. That's already been
6 decided at this point.

7 THE COURT: Right.

8 Ms. Vann, anything? Do you want to add anything?

9 MS. VANN: I don't think there's anything to add. I
10 think, you know, I agree that the question is whether it
11 would be different had they raised the information that we
12 raised over the last two days.

13 THE COURT: Right. And Judge Young ruled way back when
14 that Mr. Diggs' performance at trial was not deficient or was
15 not ineffective. Excuse me.

16 MS. SCRANTOM: That is correct, Your Honor.

17 THE COURT: Okay. All right. Anything else? Anything
18 by way of argument?

19 MS. VANN: Your Honor, we would appreciate an
20 opportunity to submit a post-hearing brief. I think it could
21 help to bring some of the -- or at least pull all of the
22 information together that we've presented over the last two
23 days.

24 THE COURT: I'll allow you to do that. I mean do you
25 want a transcript to be able to do that?

1 MS. VANN: I would appreciate a transcript. I think it
2 would help to just pull everything together for your review.

3 THE COURT: Okay.

4 Madam Court Reporter, what kind of time frame? I know
5 you said you've got all this stuff to do too.

6 THE COURT REPORTER: But this would move to the top. I
7 would have to do it first.

8 THE COURT: Well, you --

9 THE COURT REPORTER: It's there. I just have to edit
10 it.

11 THE COURT: She pretty much already has the transcript.
12 She's just got to edit it because it was --

13 THE COURT REPORTER: A week or two.

14 THE COURT: Probably a couple of weeks.

15 MS. VANN: Okay.

16 THE COURT: And then I'll give you 30 days from that to
17 brief it.

18 MS. VANN: Yes.

19 THE COURT: Do you want to just simultaneously brief it
20 or do you want to brief in response?

21 MS. SCRANTOM: It is our typical practice to ask that we
22 don't simultaneously brief the issues. I know personally the
23 last time I got into that in a non-capital case, the briefs
24 at the end of the day ended up totaling well over 100 pages.
25 And so I think that, as the respondent, we can more

1 succinctly address the issues if we are given time to
2 respond.

3 THE COURT: All right. I'll give you 30 days from the
4 receipt, but I'm going to kind of leave it up -- well, Madam
5 Court Reporter, you let me know when it's forwarded to them.

6 THE COURT REPORTER: Yes, sir.

7 THE COURT: And -- but you let me know if you need any
8 -- I say 30 days. If you need some additional time and you
9 ask me, I'll work with you on that as well.

10 And then I'll give you sufficient time likewise to
11 respond, Ms. Scrantom. Okay?

12 MS. SCRANTOM: Thank you, Your Honor.

13 MS. VANN: Thank you, Your Honor.

14 THE COURT: All right. Anything else?

15 MS. VANN: Nothing from the applicant, Your Honor.

16 MS. SCRANTOM: Nothing, Your Honor.

17 THE COURT: You all have a nice evening.

18 MS. VANN: Thank you.

19 MR. SCRANTOM: Thank you, Your Honor.

20 THE COURT: Safe travels.

21 (WHEREUPON, the proceedings ended at 4:50 p.m.)

22

23 --- END REQUESTED TRANSCRIPT ---

24

25

1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 441, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Georgetown County, South Carolina, on the 28th and 29th days of January, 2019.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

Krystal J. Smith

Court Reporter

20 Florence, South Carolina
21 February 13, 2019

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO:
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12TH CIRCUIT AT LARGE
P.O. BOX 13563
FLORENCE SC 29504

AFFIDAVIT OF RUSSELL STETLER

Russell Stetler, who appeared personally before me, affirms and states the following:

1. I, Russell Stetler, am the National Mitigation Coordinator for the Federal Death Penalty Projects. In that position, I consult on death penalty cases around the country, organize training on mitigation investigation for lawyers and mitigation specialists, and teach at various capital training programs around the country.

2. I was asked by post-conviction relief counsel for Stephen C. Stanko to summarize the prevailing professional norms in the investigation and presentation of mitigation and mental health evidence in capital cases at the time of Mr. Stanko's Georgetown County prosecution, trial, and death sentence (2005-2006), with particular attention to the importance and process of developing and presenting effective, humanizing mitigation evidence at trial.

3. I previously testified in Mr. Stanko's Horry County Post-Conviction Relief (PCR) hearing on March 2, 2015. I was qualified in that hearing as an expert in the professional norms in investigation and presentation of mitigation evidence and testified about the professional norms for investigating a capital case at the time of Mr. Stanko's Horry County trial in 2009 and how defense teams should prepare for a second trial for the same client. If I were asked to testify about the professional norms for investigation and presentation of mitigation evidence in Mr. Stanko's Georgetown County PCR hearing, my testimony would be as follows:

4. The prevailing norms in mitigation investigation are addressed in detail in this affidavit, but the critical points can be summarized succinctly. Counsel's duty to conduct a thorough mitigation investigation was well established by 2005. *See Williams v. Taylor*, 529 U.S. 362, 396 (2000) (ineffective assistance where capital counsel in a 1986 trial "did not fulfill their obligation to conduct a thorough investigation of the defendant's background"). Writing for the Court's majority, Justice Stevens cited the American Bar Association's STANDARDS FOR CRIMINAL JUSTICE (2d ed. 1980) concerning the need to investigate sentencing issues thoroughly. *Id.* at 396. Standard 4.4-1 of the Defense Function described the duty to investigate as follows: "It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case *and the penalty in the event of conviction.*" *Id.* at 4:53 (emphasis added). In discussing mitigation, the Commentary continued, "Information concerning the defendant's background, education, employment record, mental and emotional stability, family relationships, and the like, will be relevant, as will mitigating circumstances surrounding the commission of the offense itself." *Id.* at 4:55. By the time of Mr. Stanko's prosecution, the ABA had published (in 1989) and revised (in 2003) detailed Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty cases, available at: www.ambar.org/1989guidelines and www.ambar.org/2003guidelines respectively. As I explained in my Horry County testimony, these guidelines are not "inexorable commands," but they do reflect the

collective experience and expertise of capital defense practitioners all over the country at the time of their publication.¹

5. The need to investigate mental illness in the context of mitigating evidence was also well established by 2005. *See Ake v. Oklahoma*, 470 U.S. 68, 80 (1985) (due process right to psychiatric assistance when mental condition is relevant to culpability *or punishment*).² The Eighth Amendment jurisprudence of the United States Supreme Court has mandated individualized sentencing in death penalty cases since 1976. *See Gregg v. Georgia*, 428 U.S. 153, 156 (1976) (finding Georgia's death penalty statute constitutional in part because it allowed for mercy based on individualized consideration) and *Woodson v. North Carolina*, 428 U.S. 280, 301 (1976) (finding mandatory statute unconstitutional because it would allow the blind infliction of the death penalty on members of a faceless undifferentiated mass).

6. Effective capital defense throughout the modern (post-*Furman*) era of the death penalty has required counsel to conduct a thorough investigation of the client's life. This investigation generally involves a multigenerational inquiry into the biological, psychological, and social influences on the development and adult functioning of the accused. Mitigation investigation involves parallel tracks of collecting and analyzing life-history records, and conducting multiple, in-person, face-to-face interviews. The purpose of this thorough investigation is to develop evidence that will humanize the defendant, help jurors to understand why he may have committed the capital offense, and to evoke compassion and empathy by identifying the client's individual frailties that at once establish human kinship and expose vulnerabilities and disadvantage. A thorough social history investigation also provides the foundation for reliable mental health evidence and enables counsel to make informed decisions about what kind of mental health experts to consult and what questions they should address. The fruits of a thorough mitigation investigation not only provide capital defendants with the effective representation to which they are entitled under the Sixth Amendment, but assure jurors of the opportunity to consider all the evidence relevant to the reasoned moral judgment they are asked to render, thereby also assuring the courts of an outcome that is reliable and just.

¹ I have also discussed at length the relationship of the ABA Death Penalty Guidelines to prevailing capital defense norms in two law review articles: *The ABA Guidelines and the Norms of Capital Defense Representation* (written in collaboration with Professor W. Bradley Wendel), 41 HOFSTRA L. REV. 635 (2013) and *The ABA Guidelines: A Historical Perspective* (written in collaboration with Aurélie Tabuteau), 43 HOFSTRA L. REV. 731 (2015).

² The High Court noted that "[m]any states, as well as the Federal Government currently make psychiatric assistance available to indigent defendants," citing, among other statutes and opinions, S.C. CODE § 17-3-80 (Supp. 1983).

Background and Qualifications³

7. I am the National Mitigation Coordinator for the federal death penalty projects, which are described more fully at their web site, www.capdefnet.org. This national position was created in 2005 in response to the increased demand for effective mitigation preparation in death penalty cases⁴ following the U.S. Supreme Court decision in *Wiggins v. Smith*, 539 U.S. 510 (2003), and the February 2003 revision of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. In this capacity, I consult with lawyers, investigators, mitigation specialists, and experts in connection with death penalty cases around the country.

8. From 1995 to 2005, I served as the Director of Investigation and Mitigation at the New York Capital Defender Office, which was established under New York State's death penalty statute with a mandate to ensure that indigent defendants in capital cases received effective assistance of counsel. The Capital Defender Office was charged with creating an effective system of capital defense throughout New York State by providing direct representation and offering assistance to private counsel assigned by the courts to represent indigent capital defendants. I supervised a statewide staff of investigators and mitigation specialists, and I consulted with lawyers, investigators, mitigation specialists, and experts who were retained or employed by the Capital Defender Office or the private bar in connection with death penalty cases.

9. From 1990 to 1995, I served as Chief Investigator at the California Appellate Project, a nonprofit law office in San Francisco that coordinated appellate and post-conviction representation of all the prisoners under sentence of death in California. In that capacity, I also supervised an in-house staff and consulted with staff attorneys and court-appointed counsel, as well as investigators, mitigation specialists, and experts outside the office who were retained to assist counsel representing death-sentenced prisoners.

10. I have investigated all aspects of death-penalty cases since 1980, first working in a private office in California and later in institutional offices. Since 1980, I have regularly attended seminars and conferences relating to the defense of capital cases at trial, on appeal, and in post-conviction proceedings. Most of these conferences were organized and attended by attorneys specializing in capital work. I investigated mitigation evidence in over two dozen death penalty cases in California in the 1980s.

11. Since 1990, I have lectured extensively on capital case investigation, particularly the investigation of mitigation evidence. I have lectured on these subjects not only in New

³ A copy of my current CV is attached to this affidavit as Exhibit A.

⁴ See Jon B. Gould & Lisa Greenman, Report to the Committee on Defender Services, Judicial Conference of the United States, Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases, 111-112, September 2010 (Commentary describes authorization of the position "to assist in expanding the availability and quality of mitigation work in death penalty cases in the federal courts" and the role of the National Mitigation Coordinator in case consultations and training).

York and California, but in many other death-penalty jurisdictions, including Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming, and Puerto Rico.⁵ Over the past three decades, I have lectured at over four hundred continuing legal education programs around the country, including three in South Carolina,⁶ as well as over a hundred additional programs at law schools and related professional conferences in the United States, Europe, and Asia.

12. Since the 1990s, I have lectured on mitigation investigation in death penalty cases at multiple national training conferences sponsored by the following organizations: the NAACP Legal Defense Fund (annual Airlie conference), the National Legal Aid and Defender Association (“Life in the Balance”), and the National Association of Criminal Defense Lawyers (“Making the Case for Life”). At various times over the past three decades, I have served on the planning committees for these national conferences, as well as the annual Capital Case Defense Seminar sponsored by California Attorneys for Criminal Justice (CACJ) and the California Public Defenders Association (CPDA), which is attended by over a thousand practitioners. I was a co-chair of the planning committee for this seminar in 2009 and from 2011 to 2015. I have also taught at the death penalty colleges at the Santa Clara University School of Law in California and the DePaul University College of Law in Illinois. I have taught at over a dozen capital defense seminars throughout the country under the auspices of the National Institute of Trial Advocacy and over a dozen “bring-your-own-case” capital brainstorming seminars under the auspices of the National Consortium for Capital Defense Training and its regional counterparts. I also designed and organized the annual Capital Mitigation Skills Workshop, which has been held eight times since 2012 under the auspices of the federal Habeas Assistance and Training Counsel Project.

13. Since 1993, I have contributed extensively to the California Death Penalty Defense Manual published by the California defense bar (CACJ and CPDA). This multi-volume reference has a volume devoted to the investigation and presentation of mitigation evidence which I helped to shape in the 1990s. In 1999, I published articles on *Mitigation Evidence in Death Penalty Cases* and *Mental Disabilities and Mitigation* in THE CHAMPION, the monthly magazine of the National Association of Criminal Defense Lawyers, as well as an article entitled *Why Capital Cases Require Mitigation Specialists* in INDIGENT DEFENSE, published by the National Legal Aid and Defender Association. These and other articles of mine were cited in the Commentary to the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, rev. 2003, 31 HOFSTRA L. REV.

⁵ At the time I lectured on those subjects in Connecticut, Delaware, Illinois, Maryland, New Jersey, New Mexico, New York, and Washington capital punishment was permissible in those jurisdictions.

⁶ I was on the faculty of a “bring-your-own-case” training in Charleston, South Carolina, February 9-10, 2006. The two nonlawyer members of Mr. Stanko’s Georgetown County defense team attended. See ¶¶ 12, 33 *infra*.

913 (2003), available at ambar.org/2003guidelines. I have published three articles on prevailing norms in the development of mitigation and mental health evidence: *The ABA Guidelines and the Norms of Capital Defense Representation* (written in collaboration with Professor W. Bradley Wendel), 41 HOFSTRA L. REV. 635 (2013); *Mental Health Evidence and the Capital Defense Function: Prevailing Norms*, 82 UMKC L. REV. 407 (2014); and *The ABA Guidelines: A Historical Perspective* (written in collaboration with Aurélie Tabuteau), 43 HOFSTRA L. REV. 731 (2015). Most recently, I published two articles on the historical development of the mitigation function: *The Past, Present, and Future of the Mitigation Profession: Fulfilling the Constitutional Requirement of Individualized Sentencing in Capital Cases*, 46 HOFSTRA L. REV. 1161 (2018) and *Lockett v. Ohio and the Rise of Mitigation Specialists*, 10 CONLAWNOW 51 (2018), the online journal of *Akron Law Review*.

14. I am the co-author of chapters on psychiatric issues in death penalty cases in two books: *Dead Men Talking: Mental Illness and Capital Punishment*, in FORENSIC MENTAL HEALTH: WORKING WITH OFFENDERS WITH MENTAL ILLNESS (Gerald Landsberg, D.S.W., & Amy Smiley, Ph.D., eds.; Kingston, New Jersey: Civic Research Institute, Inc., 2001) and *Punishment*, in PRINCIPLES AND PRACTICE OF FORENSIC PSYCHIATRY, 2d ed. (Richard Rosner, M.D., ed.; London: Arnold Medical Publishing, 2003; U.S. distribution by Oxford University Press). I am also a co-author of A PRACTITIONER'S GUIDE TO REPRESENTING CAPITAL CLIENTS WITH MENTAL DISORDERS AND IMPAIRMENTS (Bishop Auckland, U.K.: International Justice Project, 2008). I am a co-author of the opening chapter, *Mitigation Works*, of TELL THE CLIENT'S STORY: MITIGATION IN CRIMINAL AND DEATH PENALTY CASES (Edward Monahan & James Clark eds., 2017), published last year by the American Bar Association.

15. I have been qualified as an expert witness in multiple state and federal courts and have provided opinion evidence on standard of care issues in capital cases (especially in the investigation and presentation of mitigation evidence) by live testimony or affidavit over two hundred times in numerous jurisdictions, including Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. I have testified as an expert witness thirty-one times, including my prior testimony in Mr. Stanko's Horry County case in South Carolina. I have also provided testimony in capital habeas corpus cases in the Districts of Arizona, Arkansas (Eastern), California (Eastern), Idaho, Iowa (Northern), Louisiana (Middle), Missouri (Western), Texas (Northern), and Wyoming, as well as in state capital post-conviction proceedings in Alabama, Arkansas, California, Colorado, Louisiana, Nevada, South Carolina, and Wyoming.

16. Over the years, I have been directly involved in hundreds of capital cases, including scores of trials and post-conviction hearings. I have also been consulted in various capacities on capital cases in numerous jurisdictions throughout the United States.

Materials Reviewed in Mr. Stanko's Case

17. At the request of Mr. Stanko's Georgetown County state post-conviction counsel, I have reviewed the following case materials: direct appeal opinions from the Georgetown and Horry County cases, *State v. Stanko*, 376 S.C. 571, 658 S.E.2d 94 (2008) and 402 S.C. 252, 741 S.E.2d 708 (2013); testimony from the defense presentations at trial in both the Georgetown and Horry County cases; *48 Hours: Murder on his Mind* (CBS television broadcast about Mr. Stanko's Georgetown County case aired January 13, 2007); billing records for William Diggs (lead trial counsel), Dale Davis (mitigation investigator), Vicki Childs (fact investigator), and Dr. Evelyn Califf (social history presenter).

Relevant Professional Norms in the Development and Presentation of Mitigating Evidence in Capital Cases in 2005-2006

17. *Evolution of Professional Norms:* The norms for capital defense counsel have evolved directly out of the practice of indigent capital defense. In 1989, the American Bar Association (ABA) published guidelines for defense in capital cases, which reflected a national consensus among capital defense practitioners based on their practices in the 1980s.⁷ These Guidelines were the result of years of work by the National Legal Aid and Defender Association (NLADA) to develop standards to reflect the prevailing norms in indigent capital defense. NLADA published its Standards for the Appointment of Defense Counsel in Death Penalty Cases (available at americanbar.org/content/dam/aba/migrated/DeathPenalty/RepresentationProject/PublicDocuments/NLADA_Counsel_Standards_1985.authcheckdam.pdf) in 1985. With initial support from the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID), NLADA developed its expanded Standards for the Appointment and Performance of Defense Counsel in Death Penalty Cases (emphasis added) over the course of several years. In February 1988, NLADA referred the Standards to SCLAID, which reviewed them and circulated them to appropriate ABA sections and committees. SCLAID incorporated the only substantive concerns expressed (by the Criminal Justice Section) and changed the nomenclature to "Guidelines" as more appropriate than "Standards." Each black-letter guideline is explained by a commentary, with references to supporting authorities. See Introduction to ABA Guidelines, 1989 ed. The death penalty guidelines were revised in 2003 and those 2003 revisions were in place at the time of Mr. Stanko's Georgetown prosecution and trial (available at https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2003guidelines.authcheckdam.pdf).

18. Courts have found the various editions of the ABA Criminal Justice Standards and Death Penalty Guidelines useful in assessing the reasonableness of counsel performance. As Justice Stevens noted in writing for the Court's majority in *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010): "We long have recognized that 'prevailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining

⁷ Prior to the publication of the capital defense guidelines, the ABA published the second edition of its STANDARDS FOR CRIMINAL JUSTICE (2d ed. 1980). These guidelines firmly established investigation as an integral part of all criminal cases as early as 1980.

what is reasonable. . . .” Justice Stevens cited *Strickland*, 466 U.S. 668, 688 (1984), *Bobby v. Van Hook*, 558 U.S. 4 (2009) (per curiam); *Florida v. Nixon*, 543 U.S. 175, 191, and n.6 (2004); *Wiggins v. Smith*, 539 U.S. 510, 524 (2003); and *Williams v. Taylor*, 529 U.S. 362, 396 (2000). Justice Stevens concluded: “Although they are ‘only guides,’ *Strickland*, 466 U.S. at 688, and not ‘inexorable commands,’ *Bobby*, 558 U.S. at 8, these standards may be valuable measures of the prevailing norms of effective representation. . . .” Justice Stevens also cited law review articles and the publications of criminal defense and public defender organizations (such as the National Association of Criminal Defense Lawyers and the National Legal Aid and Defender Association) as guides to prevailing professional norms. *Id.* at 367. *Accord*, *Hinton v. Alabama*, 571 U.S. 263, 272 (2014) (per curiam) (capital reversal finding trial counsel ineffective and citing *Padilla*’s analysis of “prevailing professional norms,” 559 U.S. at 366, and quoting verbatim the first two sentences of Justice Stevens’s analysis of prevailing norms).

19. *Norms for Defense Team Formation:* As revised in 2003, the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (*hereinafter*, 2003 Guidelines, *available at* ambar.org/2003guidelines) state unequivocally that lead counsel at any stage of capital representation (trial or post-conviction) should assemble a defense team as soon as possible after appointment with at least one mitigation specialist and at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments (Guideline 10.4), in order to conduct a thorough and independent investigation relating to penalty (Guideline 10.7 and Guideline 10.11). The original edition of the ABA Guidelines, adopted in 1989 (*hereinafter* 1989 Guidelines, *available at* ambar.org/1989guidelines), similarly required counsel to begin investigation immediately upon counsel’s entry into the case and to “discover all reasonably available mitigating evidence.” (1989 Guideline 11.4.1.C.) Though the ultimate responsibility for mitigation lies with lead counsel (2003 Guideline 10.4.B), the members of the defense team should function as a team, meeting regularly, sharing information, and working together to direct the investigation and develop a mitigation theory. Lead counsel, in turn, needs to respect the multidisciplinary expertise of every team member.

20. *Social History Investigation:* Counsel for a capital defendant should begin a social history investigation immediately upon appointment. The social history investigation involves the mitigation specialist and other members of the defense team requesting and obtaining life history records (for the client and family members),⁸ conducting multiple in

⁸ Record collection is particularly important because records can reveal information the client and family are reluctant to talk about or can reveal things the client and family did not know. Records are also created by an objective third party outside of the family, giving them inherent credibility. The Commentary to 2003 Guideline 10.7 (Investigation) notes, “Records should be requested concerning not only the client, but also his parents, grandparents, siblings, cousins, and children. . . . The collection of corroborating information from multiple sources – a time-consuming task – is important wherever possible to ensure the reliability and thus the persuasiveness of the evidence. Counsel should use all appropriate avenues including signed releases, subpoenas, court orders, and requests or litigation pursuant to applicable open records statutes . . .” 31 HOFSTRA L. REV.

person face-to-face interviews with key family members and other people who interacted with the client, including neighbors, classmates, coworkers, and professionals (such as teachers, counselors, mental health evaluators). (2003 Guidelines 10.7, commentary.) A social history investigation is a long process because it requires building a relationship of trust and rapport with the client and family members and the historical records relating to the client and his family often take a long time to retrieve. When interviews are conducted and records are reviewed, they often reveal information that needs to be followed up through additional interviews and record collection, making a social history investigation iterative.

21. A thorough social history investigation is vital to presenting a mitigating defense in support of a life sentence as opposed to a death sentence. To convince the jurors to vote for life, counsel must humanize the client in the eyes of the jurors. A social history investigation allows counsel to show the client as an individual who had hopes, dreams, aspirations, shortcomings, as well as strengths. Humanizing evidence helps to show the accused as someone the jurors can identify with, so that they can understand where things began to unravel in the defendant's life and the circumstances that led him to be before the jury as a capital defendant.

22. *Mitigation Mental Health Expert Selection:* The 1989 Guidelines also required counsel to retain experts for investigation and "preparation of mitigation." (1989 Guideline 11.4.1.D(7).) Similarly, the 2003 Guidelines recognize: "In particular, mental health experts are essential to defending capital cases." (2003 Guideline 4.1, commentary.) Prior to identifying the expert(s) to retain for the purposes of conducting an evaluation to aid in developing and presenting mitigation evidence, the defense team must have first conducted enough of their social history investigation to allow counsel to identify what kind of experts are needed and what types of question the experts should address. For example, if the social history investigation reveals the client suffered from head injuries, counsel should consider retaining the services of a neuropsychologist. However, if the social history investigation indicates the client's exposure to trauma, counsel should retain the services of a psychologist or psychiatrist with expertise in trauma.

23. *Social History Investigation and Mental Health Evaluations:* A social history investigation and a reliable mental health evaluation must be closely connected. A social history investigation provides hard data, independently corroborated, that did not come solely from the client, lending greater credibility to any mental health evaluation. Additionally, mental health experts should be given as much information as possible about the client's life, especially during the developmental years, and a multigenerational family history, in order to reliably assess the client's mental health. I have discussed the relationship between the social history investigation and capital mental health assessments in detail in *Mental Health Evidence and the Capital Defense Function: Prevailing Norms*, 82 UMKC L. REV. 407 (2014).

24. *Developing Consistent Mitigation Themes:* The social history investigation and any expert evaluations must then be used by the defense team to inform their selection of

mitigation themes to present (through lay and expert witnesses and social history records) as a defense in a capital trial. It is not appropriate to select defense/mitigation themes prior to conducting a thorough social history investigation and conducting any necessary expert evaluations.

25. The mitigation themes should be unified, meaning that they should be integrated into the whole defense theory of the case (presented in both the guilt and punishment phases). Early empirical research by the Capital Jury Project,⁹ which has interviewed nearly 1200 jurors who served on capital cases, has documented the phenomenon of premature deliberation,¹⁰ leading capital defenders to adopt “frontloading” approaches.¹¹ A practical conclusion from this research is that capital defense counsel need to start propounding their mitigation theory early on in voir dire and in the guilt phase of the case instead of waiting until a conviction to begin to present mitigation evidence because some jurors would have already made up their mind on punishment by then.

26. Thus, it is important for defense counsel to present a consistent defense theory throughout the trial, across trial phases and witnesses. Counsel cannot present contradictory theories in the first and second phases of the trial. If the defense in the first phase is to deny guilt and the punishment phase defense admits guilt but attempts to offer an explanation for the crime, counsel loses credibility with the jurors. *See also* Scott E. Sundby, *The Jury*

⁹ The Capital Jury Project was initiated in 1991 by a consortium of university-based researchers with support from the National Science Foundation. Over the next two decades, the project interviewed 1198 jurors from 353 capital trials from fourteen states, using structured interviews from three to four hours in duration. *See* William J. Bowers, *The Capital Jury Project: Rationale, Design, and Preview of Early Findings*, 70 IND. L.J. 1043, 1077 (1995).

¹⁰ *See* William J. Bowers et al., *The Capital Sentencing Decision: Guided Discretion, Reasoned Moral Judgment, or Legal Fiction*, in AMERICA’S EXPERIMENT WITH CAPITAL PUNISHMENT: REFLECTIONS ON THE PAST, PRESENT, AND FUTURE OF THE ULTIMATE PENAL SANCTION (James R. Acker et al. eds. 2d ed. 2003) at 425-28, (explaining that most jurors reported discussing punishment during the guilt phase and that the earlier the punishment decision is made, the more likely it is for death); William J. Bowers, *The Capital Jury Project: Rationale, Design, and Preview of Early Findings*, 70 IND. L.J. 1043, 1091-92 & 1091 tbl.8 (1995) (explaining that a “good many” of the jurors were “absolutely convinced” of the appropriate punishment—usually death—before the sentencing phase even began); William J. Bowers et al., *Foreclosed Impartiality in Capital Sentencing: Jurors’ Predispositions, Guilt-Trial Experience, and Premature Decision Making*, 83 CORNELL L. REV. 1476, 1488 & tbl.1, 1491-92 (1998) (explaining that interviews with 864 capital jurors in eleven states revealed that almost half of those jurors believed they knew what the punishment should be before the sentencing phase of trial began and that approximately 75 percent of those jurors never wavered from their initial choice).

¹¹ *See* John H. Blume et al., *Competent Capital Representation: The Necessity of Knowing and Heeding What Jurors Tell Us About Mitigation*, 36 HOFSTRA L. REV. 1035, 1044 (2008).

and Absolution: Trial Tactics, Remorse and the Death Penalty, 83 CORNELL L. REV. 1557 (1998) (death penalty twice as likely with denial defense and no acceptance of responsibility).

27. *Insanity Defenses in Capital Cases*: Psychiatric defenses are rare, and successful mental defenses extremely rare. Overreliance on experts and the hope of avoiding a first-degree murder conviction through expert testimony ignores the sobering lessons from insanity-defense cases. As one study of the insanity defense noted two decades ago, “Contrary to popular belief, insanity is pleaded in less than one percent of all felony cases and is successful in only one-quarter of the cases in which it is pleaded. Thus, for every 1000 felony cases, insanity is pleaded in approximately nine cases and is successful in only two.” Grant H. Morris, *Placed in Purgatory: Conditional Release of Insanity Acquittes*, 39 ARIZ. L. REV. 1061, 1063 (1997) (citations omitted). Another report cited studies indicating “that eighty percent of those defendants found NGRI had been previously hospitalized for mental illness, and that between sixty-five and eighty percent had been previously diagnosed as not just mentally ill but actively psychotic.” Ira Mickenberg, *A Pleasant Surprise: The Guilty But Mentally Ill Verdict Has Both Succeeded in Its Own Right and Successfully Preserved the Traditional Role of the Insanity Defense*, 55 CINCINNATI L. REV. 943, 945 (1987).

28. A more recent study noted that jurors in death penalty cases are particularly likely to reject insanity defenses:

While the vast majority of people view the insanity defense with great skepticism, research has found that death-qualified venirepersons are even less receptive to it than are their excludable counterparts. Consequently, the aforementioned research concluded that capital defendants who plead NGRI face a particularly difficult challenge: attempting to prove their innocence to a jury [biased] toward conviction and in favor of the death sentence before their trial even begins.

Brooke Butler & Adina W. Wasserman, *The Role of Death Qualification in Venirepersons’ Attitudes Toward the Insanity Defense*, 36 J. APPLIED SOC. PSYCHOLOGY 1744 (2006) (citations omitted). These researchers conducted an empirical study of three hundred venirepersons from the 12th Judicial Circuit in Florida and found that death-qualified venirepersons, when compared to excludables, were more likely to endorse certain insanity myths, find the defendant guilty, and sentence the defendant to death. *Id.* at 1744.

29. Raising an insanity defense in a capital case also runs contrary to the idea of a consistent and integrated defense theory because an insanity defense asks jurors in the guilt phase to find that the defendant should be excused from his conduct due to insanity – it is an affirmative defense. If that evidence is rejected by the jury in the merits phase, counsel must then use the same evidence in the penalty phase not as an excuse, but as a reason to spare the individual’s life. By the time of the penalty phase, the jury has already rejected the evidence, likely for all purposes.

30. *Psychopathy is Not Mitigating*: It is not mitigating to present a theory that a capital defendant is a psychopath or a person with antisocial personality disorder.¹² In nearly four decades, I have attended no capital defense training programs that have advocated presenting a capital client as a psychopath. On the contrary, evidence that a capital defendant is a psychopath or has antisocial personality disorder is considered aggravating and defense counsel should be concerned about that evidence being offered by the prosecution. As a result, there has been a great deal of capital defense training addressing the issue and challenging the prosecution's use of that evidence as aggravation. Such evidence is aggravating because it presents the client as lawbreaking, callous, and lacking empathy, which will dehumanize the defendant in the eyes of the jury. Use of these negative, prejudicial labels also places the defendant in a particular category, saying he is not like other people, encouraging the jury to view the defendant as a member of a "faceless, undifferentiated mass," deserving that label, rather than as a complex individual. See, for example, John H. Blume & David P. Voisin, *Avoiding or Challenging a Diagnosis of Antisocial Personality Disorder*, THE CHAMPION, April 2000, at 69. (Both authors were then representing capital clients in South Carolina.)

31. In Mr. Stanko's Georgetown County case, trial counsel called as his final witness in the first (guilt-innocence) phase of the trial Thomas Sachy, M.D., a neuropsychiatrist who testified that Mr. Stanko had "the brain of a psychopath." Tr., Aug. 10, 2006, at 1767. Standing mitigation on its head, Dr. Sachy saw even positive, humanizing things about Mr. Stanko, such as his being "liked by teachers and students" in high school, through the lens of his psychopathy diagnosis as evidence of "superficial charm." *Id.* at 1789-90, citing the Hare Psychopathy Checklist Revised. The defense psychiatrist noted popular fascination with psychopaths, saying "They're the Hannibal Lecters from *Silence of the Lambs*. These are the murderous psychopaths. They seem almost – they are terrifying. They are like evil. They are the devil." *Id.* at 1797-98. Psychopathy was presented as a permanent condition, apparently arising at birth and unchanging for the remainder of an individual's life. At one point, Dr. Sachy even compared "psychopaths" to a lizard or an alligator, controlled by the reptilian (or limbic) region of the brain and lacking the region that puts the "brakes" on violent urges. *Id.* at 1766: "... if you walk up to an alligator or – or a lizard, when it looks at you, it's [sic] – it's [sic] only decision making is, do I eat you, do I attack you, or do I run from you. That's all these lower regions of the brain do." *Id.*

¹² The two concepts should not be used interchangeably. The *diagnosis* of Antisocial Personality Disorder is officially recognized in the AM. PSYCHIATRIC ASS'N'S DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 659-663 (5th ed., 2013) ("DSM-5"). The *construct* of psychopathy is not officially recognized in the current DSM. It is viewed by its proponents as a subset of the individuals diagnosed with Antisocial Personality Disorder. See John F. Edens, *Unresolved Controversies Concerning Psychopathy: Implications for Clinical and Forensic Decision Making*, 37 PROF. PSYCHOL. RES. & PRAC. 59 (2006). Estimates of incarcerated male inmates who meet the criteria for Antisocial Personality Disorder range from 49 to 80 percent. Mark D. Cunningham & Thomas J. Reidy, *Antisocial Personality Disorder and Psychopathy: Diagnostic Dilemmas in Classifying Patterns of Antisocial Behavior in Sentencing Evaluations*, 19 BEHAV. SCI. & L. 333, 340 (1998).

32. Although counsel called a number of witnesses in the penalty phase, more than half were used to suggest that law enforcement was to blame for not arresting Mr. Stanko for other criminal conduct prior to the homicides. Rather than contextualizing his conduct, trial counsel offered evidence of more criminal behavior and then blamed the authorities for not taking action. The few witnesses who attested to good adjustment at the jail or Mr. Stanko's brighter moments in high school were overshadowed by the theme of psychopathy.

33. *South Carolina CLE Training:* The standards discussed in this affidavit were not developed for purposes of post-conviction review. They had been taught to trial practitioners at CLE's across the country and in South Carolina by the time of Mr. Stanko's Georgetown County prosecution. In his 2005 State of the Union address, President Bush announced a plan "to fund special training for defense counsel in capital cases, because people on trial for their lives must have competent lawyers by their side."¹³ As a result, the Bureau of Justice Assistance funded a series of "bring-your-own-case" capital training programs across the country rooted in the standards discussed here. In early 2006, I taught at the CLE program in Charleston, South Carolina, organized by the National Consortium for Capital Defense Training. I did a lecture called, "The Elements of Social History Work – the Team Approach." The program involved a series of lectures followed by small group discussions to allow for brainstorming the issues discussed in the lectures in the context of the teams' own cases. Vicki Childs and Dale Davis were on the attendee list as participants in the bring-your-own-case program and they brought the Stanko case. Neither of Mr. Stanko's lawyers attended the program. There was no charge to attend the program; the BJA grant covered travel and lodging costs, as well as registration and materials, for all attendees. The faculty included one of South Carolina's foremost authorities on social history testimony, Dr. Arlene Andrews, from the University of South Carolina's School of Social Work.

34. I have provided this affidavit on a *pro bono* basis.

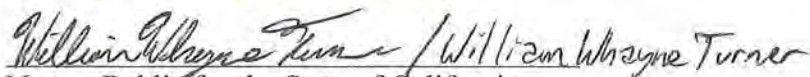
I affirm, under the penalty of perjury, that the foregoing is true and correct.



RUSSELL STETLER

Sworn to and subscribed before me

This 20 day of December, 2018



Notary Public for the State of California
My commission expires: 08/10/2021

see Attached WT

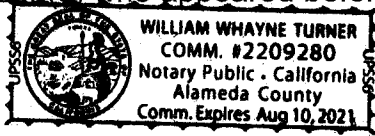
¹³ President George W. Bush's State of the Union Address (Feb. 2, 2005), *available at*: <http://www.johnstonarchive.net/policy/bushstun2005.html> (last visited Dec. 19, 2018).

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

Subscribed and sworn to (or affirmed) before me on this 20th
day of December, 2018, by Russell D Jr Stetler

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature William Whayne Turner

see Attached WT

Curriculum Vitae

RUSSELL STETLER

December 2018

Personal

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Career

2005-present National Mitigation Coordinator, Federal Death Penalty Resource
Counsel Project and Habeas Assistance and Training Counsel
Project

National position established to provide assistance to counsel and the federal courts in (a) understanding the nature, scope, and use of mitigation evidence in capital cases and (b) meeting the demand for individuals skilled in the investigation, development, and presentation of evidence that supports a sentence other than death in capital proceedings. Duties include case consultations, expert assistance, recruitment and training, as well as research and dissemination of material relating to mitigation issues.

1995-2005 Director of Investigation & Mitigation
New York Capital Defender Office

Director of investigation and mitigation, overseeing staff in three statewide offices responsible for direct representation and assistance to institutional defenders and appointed counsel in all cases involving death-eligible defendants pretrial and death-sentenced prisoners on direct appeal. Responsible for training and development of training materials and publications; development of investigative plans for both guilt and sentencing investigations

in death-eligible cases statewide; supervision of CDO investigative staff; consultation with institutional defenders and appointed counsel; and coordination of expert consultations.

- 1990-95 Chief Investigator, California Appellate Project, San Francisco, California
- Chief of unit of investigators and mitigation specialists assisting court-appointed counsel representing death-sentenced prisoners in habeas corpus proceedings before the California Supreme Court and federal courts. Coordinator of CAP's statewide training of court-appointed counsel in investigation of capital post-conviction habeas corpus claims. Member of CAP's management and resource allocation committees.
- 1980-90 Private investigator, San Francisco, California
- Private practice emphasizing trial preparation in complex litigation in both state and federal court, with specialization in capital cases. Investigated over 100 homicide cases (roughly a third of which were capital cases) on behalf of defense counsel. Experience also included defense of high-profile espionage, drug, and RICO cases.
- 1978-80 Faculty, Caribbean School, Ponce, Puerto Rico
- 1973-78 Broadcast reporter/editor, Internews, Berkeley, California
- 1971-73 Editor, Ramparts Press, Berkeley, California
(Consulting editor through 1980)
- 1969-70 Research grant recipient, Atlantic Peace Foundation, London, England
- 1968-69 Faculty, Hendon College, London, England
- 1966-68 Research assistant to Bertrand Russell and staff member, Bertrand Russell Peace Foundation, London and New York

Professional publications

- 2018 Coauthor with John Philipsborn, Book Review, *Intellectual Disability and the Death Penalty: Current Issues and Controversies* by Marc Tassé and John Blume, THE CHAMPION (November 2018).
- Lockett v. Ohio and the Rise of Mitigation Specialists, 10 CONLAWNOW 51.
- The Past, Present, and Future of the Mitigation Profession: Fulfilling the Constitutional Requirement of Individualized Sentencing in Capital Cases*, 46 HOFSTRA L. REV. 1161 (2018).
- 2017 Coauthor with John Blume, *Mitigation Matters*, in TELL THE CLIENT’S STORY: MITIGATION IN CRIMINAL AND DEATH PENALTY CASES (Edward Monahan & James Clark, eds., American Bar Association, 2017).
- 2015 Coauthor with Aurélie Tabuteau, *The ABA Guidelines: A Historical Perspective*, 43 HOFSTRA L. REV. 731 (2015).
Reprinted with permission in 35 AMICUS JOURNAL 20 (2015).
- 2014 Book review, *Just Mercy: A Story of Justice and Redemption* by Bryan Stevenson. 38:8 THE CHAMPION 58 (October 2014).
- Remembering Michael Millman*, 41:3 FORUM 22 (September 2014).
- The U.S. Death Penalty and the Vital Role of Volunteers*, 33 AMICUS JOURNAL 27 (2014).
- Mental Health Evidence and the Capital Defense Function: Prevailing Norms*, 82 UMKC L. REV. 407 (2014).
- 2013 Coauthor with W. Bradley Wendel, *The ABA Guidelines and the Norms of Capital Defense Representation*, 42 HOFSTRA L. REV. 635 (2013).
- 2010 *Investigations in a Criminal Case*, chapter 11 in NAT’L LEGAL AID AND DEFENDER ASSOC., INTERNATIONAL LEGAL AID & DEFENDER SYSTEM DEVELOPMENT MANUAL (Christie S. Warren ed., November 2010)

- 2009 *The Unknown Story of a Motherless Child*, 77 UMKC L. REV. 947 (2009).
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2002 *Investigating the State=s Evidence: A Guide to Postconviction Investigation of the Sources of Wrongful Capital Convictions* (Washington, D.C.: Habeas Assistance and Training Counsel Project of the Administrative Office of the U.S. Courts).

2001 Coauthor with Leah George, M.S.W., *Dead Men Talking: Mental Illness and Capital Punishment*, in FORENSIC MENTAL HEALTH: WORKING WITH OFFENDERS WITH MENTAL ILLNESS (Gerald Landsberg, D.S.W., and Amy Smiley, Ph.D., eds.; Kingston, New Jersey: Civic Research Institute, Inc., 2001).

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Working with the victims= survivors in death-penalty cases, 28:5 THE CHAMPION 42 (June 1999).

Mental disabilities and mitigation, 28:3 THE CHAMPION 49 (April 1999).

Mitigation evidence in death-penalty cases, 28:1 THE CHAMPION 35 (January-February 1999).

Books

Author	THE BATTLE OF BOGSIDE (London: Sheed & Ward, 1970)
Editor	THE ASSASSINATIONS: DALLAS AND BEYOND (New York: Random House, 1976)

Awards

2004	National Legal Aid and Defender Association, Life in the Balance Achievement Award
2005	National Association of Criminal Defense Lawyers, President=s Commendation
2008	California Attorneys for Criminal Justice, President=s Award, CACJ 35 th Anniversary
2010	National Association of Legal Investigators, Legacy Member Award
2013	California Attorneys for Criminal Justice, President=s Award

Professional memberships

Association of Federal Defenders
 California Attorneys for Criminal Justice (associate)
 California Association of Licensed Investigators
 National Association of Criminal Defense Lawyers (associate)
 National Association of Legal Investigators
 National Legal Aid and Defender Association
 New York State Defenders Association

Other service

Editorial advisory board, National Association of Criminal Defense Lawyers, THE CHAMPION

 Atlantic Center for Capital Representation, Philadelphia, Pennsylvania; secretary, nonprofit board of directors

Licensure

Private investigator, California license #PI-8650 (1981)

Education

1962-66	Haverford College, B.A., with honors in philosophy
1966-67	Graduate Faculty, New School for Social Research

1 (On the record.)

2 THE COURT: Thank you very much. Please be seated. All
3 right. Anything from the Applicant before we resume?

4 MS. PAAVOLA: Nothing, Your Honor.

5 THE COURT: All right. Anything from the State?

6 MR. ZELENKA: Nothing, Your Honor.

7 THE COURT: All right. You can call your next witness.

8 MS. VANN: The Applicant calls Russell Stetler.

9 THE COURT: All right.

10 Whereupon, Russell Stetler was called to the stand, duly
11 sworn by the clerk and testified as follows:

12 THE CLERK: State your name for the court and spell your
13 last name.

14 MR. STETLER: My name is Russell Stetler, Russell is with
15 two Ss and two Ls, Stetler, S-T-E-T-L-E-R.

16 DIRECT EXAMINATION

17 BY MS. VANN:

18 Q Good afternoon, Mr. Stetler.

19 A Good afternoon.

20 Q Let's start by summarizing your background. How are you
21 currently employed?

22 A I'm the national mitigation coordinator for the Federal
23 Death Penalty Projects.

24 Q And could you describe the Federal Death Penalty
25 Projects?

1 A Yeah. They provide assistance to lawyers who have
2 capital cases in federal court, either direct prosecutions
3 under the Federal Death Penalty Act or cases that originated
4 either in state or federal court and are in federal court on
5 habeas corpus.

6 Q And what are your duties and responsibilities in that
7 position?

8 A I consult on cases all over the country both pretrial
9 cases and habeas corpus cases. I organize training and I
10 consult with lawyers, mitigation specialists and experts and
11 sometimes try to assist the teams in getting their personnel
12 squared away.

13 Q Do you yourself provide direct representation or --

14 A No.

15 Q How long have you been in your current position?

16 A Since 2005.

17 Q Before your current position, did you have any other
18 positions that were related directly to death penalty cases?

19 A Yes.

20 Q What were those?

21 A From 1995 to 2005 I was the director of investigation
22 and mitigation at the New York State Capital Defender Office.
23 That office was created by statute when New York reinstated
24 the death penalty in 1995, and we had a mandate to ensure
25 effective representation at the trial and appellate level. So

1 my duties were, again, to consult with lawyers, investigators,
2 mitigation specialists, experts. The office did both direct
3 representation and assistance to the private bar.

4 Q And were you involved in getting that office
5 operational?

6 A Yes. Absolutely. I was one of the first people hired
7 and helped with the initial staffing decisions, and we, you
8 know, we, we staffed the, the office accordingly. As of 1995
9 investigators and mitigation specialists were widely
10 recognized as critical parts of the capital defense team. So
11 we had pretty much an equal ratio of lawyers and non-lawyers
12 for the trial teams.

13 Q Did you hold any other positions before your current
14 position involving death penalty cases?

15 A Yes. The five years before that, from 1990 to '95, I
16 was the chief investigator at the California Appellate
17 Project, which was a nonprofit that coordinated the
18 representation of all the California prisoners under sentence
19 of death, provided assistance to private lawyers handling
20 those cases either on appeal or in state post-conviction or
21 federal habeas corpus.

22 Q Are you yourself a lawyer?

23 A No.

24 Q When did you first begin working on death penalty cases?

25 A 1980.

1 Q And what capacity were you working in that -- at that
2 time?

3 A I was in a private capacity in the investigation of
4 capital cases.

5 Q Can you estimate how many capital cases you have worked
6 on personally?

7 A You know, it's hard to put a number on it, but it's, you
8 know, something in the, in the hundreds. In New York we had
9 in the ten-year life of the statute over 800 death eligible
10 cases, and we provided either direct representation or
11 assistance in all of those. I wasn't involved in all 800 but
12 of the cases that were more, more likely to be authorized and
13 go forward I had considerable involvement, and that's either
14 directly, personally or supervising staff that were involved.

15 Q At the time of Mr. Stanko's capital prosecutions, which
16 were between 2005 and 2009, what position were you in?

17 A I was finishing up at the Capital Defender Office in New
18 York for the first eight or nine months of the year, and then
19 the rest of the year I was in my current position.

20 Q Have you attended continuing legal education programs
21 dedicated to death penalty litigation?

22 A Yes. Since 1980.

23 Q Approximately how many?

24 A Something around 400.

25 Q Have you also served as faculty at the continuing legal

1 education relating to capital cases?

2 A Yes. I've done a lot of that over the last 25 years,
3 something in excess of 350 programs.

4 Q And were those trainings national or local or regional
5 in scope?

6 A All, all three. There are a few national programs that
7 have been going for a long time. The National Legal Aid and
8 Defender Association has a program called Life in the Balance,
9 National Association of Criminal Defense Lawyers has one
10 called Making the Case for Life. I've been involved in those,
11 and sometimes in the planning of the programs, but I've also
12 been involved in, you know, regional programs. I've been the
13 co-chair of the California Capital Case Defense Seminar for
14 the last five years and much earlier served on the planning
15 committee.

16 Q And you say you've helped plan continuing legal
17 education programs?

18 A Yes. And that's, that's part of my current position.

19 Q Have you served as faculty in CLEs in different
20 jurisdictions?

21 A Yes. Almost all of the death penalty jurisdictions in
22 fact, all but Montana, New Hampshire, Nebraska, and another
23 one slipping my mind.

24 Q Who are the attendees --

25 A South Dakota.

1 Q -- of these trainings?

2 A They're, typically, lawyers and mitigation specialists,
3 sometimes also investigators or experts, but those are the two
4 core groups.

5 Q Have you ever taught any CLECs in South Carolina related
6 to capital cases?

7 A Yes. I think three times.

8 Q What years were those?

9 A I think the first one was in the, in the mid-90s, around
10 1995, and then the others were 2006, 2007.

11 Q At the time of Mr. Stanko's capital prosecutions, again
12 that's 2005 to 2009, were there publications on the mitigation
13 -- on the function of mitigation investigation?

14 A Yes.

15 Q Have you written or had you written any within that
16 timeframe related to mitigation investigation?

17 A Yeah. Within that timeframe I had an article in the
18 University of Pennsylvania Journal of Law and Social Change
19 called the "Mystery of Mitigation", which is kind of just an
20 overview of mitigation evidence in capital cases, and I wrote
21 a couple of articles for the National Association of Criminal
22 Defense Lawyers' magazine *The Champion*. Again, they're always
23 about mitigation issues.

24 Q Have you published anything specifically addressing the
25 prevailing norms in mitigation investigation in capital cases?

1 A Yes. I have an article that I wrote with Professor Brad
2 Wendel of Cornell published in *Hofstra Law Review* in 2013 on
3 the ABA Guidelines and prevailing norms of capital
4 representation and another in -- on capital mental health
5 assessments. That was published last year in the University
6 of Missouri Kansas City Law Review.

7 Q At this time I'd like to show you what has been
8 previously marked as Applicant's Exhibit 18. Do you recognize
9 that document?

10 A Yes.

11 Q Could you describe what it is?

12 A Yeah. That's a copy of my CV.

13 Q Is that an accurate copy of your current CV?

14 A Yes.

15 MS. VANN: We'd move to admit that as Applicant's Number
16 18.

17 THE COURT: Any objection?

18 MR. ZELENKA: No objection to the CV.

19 THE COURT: All right. Applicant's Exhibit Number 18
20 admitted into evidence without objection.

21 (Applicant's Exhibit Number 18 [CV of Russell Stetler]
22 admitted into evidence and appropriately marked.)

23 BY MS. VANN:

24 Q Does the CV provide a full list of your publications on
25 the mitigation function?

1 A Yes.

2 Q You also said that part of your duties is consulting on
3 cases. What types of cases have you consulted on?

4 A I've consulted on both pretrial and post-conviction
5 cases all over the country. I mean, my official duties are
6 restricted to cases that are in federal court and that's what
7 I've done over the last 10 years. The 10 years before that, I
8 was consulting on trial level cases in New York, and the five
9 years before that consulting on post-conviction and federal
10 habeas cases in California.

11 Q Have you previously been qualified to testify as an
12 expert in any court regarding the standards and practices and
13 prevailing norms in death penalty cases specifically with
14 reference to the mitigation function?

15 A Yes. In the area of investigation and presentation of
16 mitigation.

17 Q About how many times have you been qualified as an expert
18 in that area?

19 A A little over 20 times.

20 Q In multiple jurisdictions?

21 A Yes. I think Alabama, Arizona, Arkansas, California,
22 Colorado, Iowa, Louisiana, Missouri, Nevada, Pennsylvania,
23 Tennessee, Texas, Wyoming.

24 Q What types of proceedings have you testified in?

25 A Some are pretrial proceedings where the issues often

1 concern funding or, or the -- what, what, what kind of funding
2 will be reasonably necessary in the circumstances for a
3 particular case. Some of the pretrial proceedings have
4 focused on access to witnesses and some have been post-
5 conviction proceedings either in state court or on federal
6 habeas corpus.

7 Q So you've testified in post-conviction proceedings like
8 this one?

9 A Yes. I have.

10 Q Were you permitted to testify as an expert in each of
11 those courts?

12 A Yes.

13 Q Is testifying a major part of your current position?

14 A No. You know, again, it's something over, over 20 times
15 in the last decade. So it comes up from time to time, but
16 it's not, not a major part of my duties.

17 Q Has any court ever found you not qualified as an expert?

18 A No.

19 Q And is your testimony in this case a part of your
20 official duties at the Federal Death Penalty Project?

21 A No. In fact, I'm, I'm here on my own time. I had to
22 take annual leave to come here.

23 Q And are you being paid for your testimony in this case?

24 A No.

25 MS. VANN: Your Honor, at this time I would like to

1 tender Mr. Stetler as an expert in the investigation and
2 presentation of mitigation evidence in capital cases.

3 THE COURT: All right. Let me get that. Investigation
4 and what?

5 MS. VANN: And presentation of mitigation evidence.

6 THE COURT: All right. Any challenges or questions by
7 the State?

8 MR. ZELENKA: My challenge, Your Honor, is to relevance
9 of the qualification. If I could have some voir dire
10 questions about his educational background.

11 THE COURT: All right. I'll allow that.

12 EXAMINATION (RE: QUALIFICATIONS)

13 BY MR. ZELENKA:

14 Q Mr. Stetler, are you a lawyer?

15 A No. I'm not

16 Q What's your educational background?

17 A Bachelor's Degree and a little bit of graduate school
18 without a, without a postgraduate degree.

19 Q Bachelor's Degree in what?

20 A In philosophy.

21 Q Philosophy. Did you ever attend law school?

22 A No.

23 Q Do you have a graduate degree?

24 A No. I do not.

25 MR. ZELENKA: I have no further voir dire questions.

1 THE COURT: All right. Any challenges to him being
2 tendered?

3 MR. ZELENKA: Your Honor, we -- our objection is, first,
4 that under -- as we asserted in our response to the motion in
5 limine, expert testimony concerning the competency of another
6 lawyer it is not appropriate in post-conviction relief. We've
7 cited McKnight versus State in our motion in limine which I
8 incorporate, too, by reference. I know you've already seen
9 it. At the time you deferred ruling ultimately on the motion
10 in limine. We also cite another case of Roderick Green versus
11 State in which expert opinion on the standards like the
12 McKnight case were found to not be an abuse of discretion to
13 disqualify that evidence in an appeal before a South Carolina
14 Supreme Court. We submit as we cited in the memorandum in
15 Bobby versus Van Hook it noted that the, the issue of expert
16 testimony and the issue is to what the standards are is
17 essentially a matter of law for the Judge to take cognizance
18 over, and we submit under the expert opinion rules that it
19 would not assist the trier of fact. Your Honor already has
20 before you what they have submitted as material that went to
21 Mr. Diggs, the ABA standards for the representation in capital
22 cases, the 2003 version, and we don't dispute that those are
23 matters which may be informational to the Court, but they
24 speak for themselves, and we would submit that further
25 evidence, further testimony based upon what they assert to be

1 his intended testimony, mitigation investigation, presentation
2 of mitigation, goes to the core of what a lawyer does in a
3 case and goes to the core as to why the alleged asserted
4 expert opinions in McKnight was found not to be an abuse of
5 discretion to disqualify him.

6 THE COURT: Okay. What -- and I'm -- I qualify him as an
7 expert in the field of investigation, of mitigation evidence,
8 but as far as presentation, what is, what is his projected
9 testimony? I mean, is this just a title that's all
10 encompassing or is there a distinction that's going to be
11 brought out in this testimony between investigation and
12 mitigation evidence and presentation of mitigation evidence?

13 MS. VANN: Well, it kind of refers to the whole
14 mitigation function of how do you develop mitigation, how do
15 you develop a theory of what you will be presenting at a
16 trial, and then ultimately what are the standards for
17 mitigation presentation at trial. So it kind of is the whole
18 range of a lawyer's responsibilities for performance in a
19 capital case.

20 THE COURT: Okay.

21 MS. VANN: With regard to the mitigation function.

22 THE COURT: All right. Well, I'm going to go ahead and
23 I'm going to find him -- I'm going to qualify him as an expert
24 over State's objection. All right. Go ahead.

25 MS. VANN: Thank you, Your Honor.

1 A Thank you, Your Honor.

2 Q When were you first contacted about Mr. Stanko's case?

3 A In September of 2014.

4 Q Have you subsequently had an opportunity to review any
5 materials relating to Mr. Stanko's case?

6 A Yes. I have.

7 Q What have you reviewed?

8 A Reviewed the direct appeal opinions in both the
9 Georgetown and Horry County cases, a summary which you
10 provided of the full testimony in the Georgetown case and the
11 -- and a summary of what was presented in, in this county as
12 well, then I read the whole of the Defense testimony both in
13 the guilt phase and penalty phase of the prosecution here,
14 also saw the 48 Hours episode that was discussed this morning,
15 and I reviewed the billing records of Mr. Diggs; the
16 mitigation specialist, Dale Davis; the fact investigator,
17 Vicki Childs; and the social history presenter, Dr. Califf.

18 Q You talked a little bit about the standards and that
19 you've written about the standards and norms for capital
20 defense. How are those standards determined?

21 A Well, they evolve directly out of the, out of the
22 practice. I think there are really two, two components.
23 There's a bit of social science research that also informs
24 what the norms are. There's been a massive study of how
25 capital jurors process mitigation information. There's a --

1 the group that begin work with a National Science Foundation
2 grant in 1991 called the Capital Jury Project that's
3 interviewed 1200 actual jurors in death penalty cases and
4 they've written up dozens of articles about how jurors make
5 their decisions, how they respond to mitigation evidence, but
6 the main thing is, you know, what kind of practice has been
7 effective, and the people who are invited to present at
8 training programs are by and large the people who have
9 pioneered the work in the field, and, and they present what,
10 what they have learned from lots of successful practice.

11 Q And are the ABA Guidelines reflective of those norms?

12 A Yeah. They grew out, directly out of that experience.
13 You know, they really were -- first drafted by the public
14 defenders, the National Legal Aid Defender Association
15 published the original draft in the 1980s of what eventually
16 was submitted to the American Bar Association and then vetted
17 through their various committees and published in 1989 as the
18 ABA Guidelines for the defense function in capital cases, but
19 it came directly out of the Public Defender practice all over
20 the country. I mean, the National Legal Aid and Defender
21 Association, again, has been having this annual death penalty
22 training program since the 1980s, and so they circulated their
23 drafts at those training programs, got feedback from the
24 people that were actually doing the work in the courts all
25 over the country.

1 Q How many publications of the ABA Guidelines or revisions
2 have there been?

3 A Well, the death penalty guidelines there are just two,
4 1989 and a revision in 2003, but they relate back to ABA
5 standards for the criminal defense function that were
6 published originally around 1980.

7 Q Were you subsequently involved in developing the
8 supplementary guidelines for the mitigation function of
9 defense teams in death penalty cases?

10 A Yes. I was.

11 Q What was your role in the development of those
12 guidelines?

13 A I was just one of the people on the, on the committee
14 that organized that effort. The main sort of chair of the
15 committee was Professor Sean O'Brien at the University of
16 Missouri, Kansas City Law School. He had a small grant to
17 survey practices around the country, but then drafts were
18 circulated at training programs, and so wherever I went in, in
19 the, in the timeframe when these guidelines were being
20 developed I circulated drafts, got feedback from the
21 participants, invited their comments, and it was a long three
22 or four-year process that ultimately then resulted in their
23 publication in 2008.

24 Q Which versions of the ABA Guidelines were in circulation
25 at the time of Mr. Stanko's trial?

1 A The 2003 guidelines.

2 Q According to the standards for a capital defense
3 representation, who should be on the team for a capital
4 defense team?

5 A They discuss a, a four-member core team, two lawyers
6 qualified to handle capital cases, a fact investigator and a
7 mitigation specialist, with the understanding that somebody on
8 that team, either one of those four or somebody in addition to
9 those four should be qualified by training and experience to
10 screen for mental disorders and impairments.

11 Q Are the mitigation investigator and or mitigation
12 specialist and the fact investigator necessarily two different
13 individuals?

14 A Yes. Because they're really different, different skill
15 sets, and I actually wrote about that in one of the articles
16 that was published in this timeframe. Essentially, you know,
17 both are demanding jobs. You want a fact investigator who
18 understands the sources of wrongful convictions and can
19 conduct a full investigation of the factual allegations, has
20 expertise with forensic evidence, for example, and then the
21 other skill set of mitigation specialist is somebody who
22 understands the capital defense function, the presentation of
23 mitigation, how to gather documentary evidence, how to analyze
24 records to identify themes and hypotheses, and also the
25 ability to conduct sensitive interviews about a client's life

1 history.

2 Q We've been talking a lot about mitigation. What exactly
3 constitutes mitigating evidence?

4 A Well, it's very broad. It's, it's whatever the defense
5 can proffer that may inspire compassion, empathy, mercy and
6 inspire a juror to vote for a sentence less than death.

7 Q Would you say that the purpose of presenting mitigation
8 is to encourage the jury to vote for a sentence of less than
9 death?

10 A Yes. It's precisely the function, and that means, you
11 know, humanizing, you know, presenting evidence that will make
12 some kind of human connection between the capital Defendant
13 and the members of the jury, make them feel that he is part of
14 their human community.

15 Q How should a defense team go about developing a
16 mitigation theory to present at trial?

17 A Well, I guess the first point is you want to put the
18 team together as early as possible. You want a team that
19 functions as a team, so meets regularly, shares information,
20 and the contribution of the mitigation specialist is going to
21 be to track down all those life history records, not only of
22 the client but other members of the family, the sort of social
23 world in which he grew up and then there's an interplay
24 between records and interviewing so you'll be conducting
25 multiple in person face-to-face interviews with key family

1 members and then spreading out beyond that to neighbors,
2 classmates, coworkers, professionals who encountered the
3 client in his developmental years. It's really got no, no
4 limit to where it ends.

5 Q Would that be what makes up a social history evaluation?

6 A Exactly.

7 Q And when should that social history evaluation begin?

8 A As soon as counsel is appointed.

9 Q And why should it start so early on in the
10 representation of the client?

11 A Well, basically because it's a long process. You're
12 going to need to build a relationship of trust and rapport
13 with -- not only with the client himself but with family
14 members. You're going to be seeking records which often just
15 take a long time to retrieve. You're dealing with
16 bureaucracies that are often understaffed. Records may be
17 stored in archives. So you don't just send a release and, and
18 get them the next day. You often have to follow up.
19 Sometimes you have to go to the institutions themselves to
20 pursue the records, and again, you want to get records not
21 only about the client but also from, from family members and
22 because records will reveal things that family members are
23 reluctant to talk about, things that they don't want to share
24 with you necessarily, and sometimes they'll also reveal things
25 that they just don't know, don't remember, but they're created

1 by objective third parties outside the family. So they have
2 inherent credibility, and the records will then identify the
3 people who created them who may also be valuable witnesses.
4 The report cards will identify teachers, for example.

5 Q At the time of Mr. Stanko's trials, 2005 to 2009, were
6 training -- were there training programs that were focused on
7 this procedure for developing a mitigation theory?

8 A Yes. Absolutely.

9 Q And when should a Defense team start looking for
10 experts?

11 A Well, you want to conduct enough of your social history
12 investigation first so that you can identify what kind of
13 expert you need and what sort of questions you want the expert
14 to address. For example, if your social history investigation
15 reveals head injuries, then that's going to point you towards
16 a neuropsychologist. If your life history investigation
17 indicates exposure to trauma, then you want somebody who's got
18 experience in, in that area. So it, it really helps you
19 identify the sort of expert who's going to be appropriate to
20 the needs of the individual case.

21 Q When did capital CLEs begin instructing on the
22 importance of a thorough mitigation investigation?

23 A Well, you know, the, the need for a mitigation
24 investigation has been around as long as I have been doing
25 this work. So back in the 1980s there were already always

1 going to be lectures on the importance of life history
2 investigation, developing mitigation evidence and integrating
3 it into your overall defense concept.

4 Q And when did these trainings first recognize that a key
5 member of the core defense team would be a mitigation
6 specialist?

7 A Well, you know, I don't know exactly when the term was
8 coined, but sometime in the 1980s and it wasn't invented in
9 one jurisdiction as opposed to another. I think everybody who
10 is doing capital work in that period came to the conclusion
11 that you needed somebody who was dedicated to that function.
12 In, in California one of the earliest examples was a, a lawyer
13 who found an ex-New York Times reporter who had written a book
14 about a murder case that she covered, and so the lawyer hired
15 that person from the journalism school, and said, you know, "I
16 want you just to do nothing else but investigate the life of
17 this capital Defendant," and then when she had done all that
18 and the case came out successfully she wrote about it, wrote
19 about the experience, and if you look at the magazines of the
20 criminal Defense bar in the 1980s there are multiple articles
21 talking about the importance of non-lawyers for conducting
22 this investigation. Some of the social workers who were early
23 practitioners wrote about their experiences in the, in the mid
24 to late 1980s, and by the late 1980s there was an article in
25 *The Champion* magazine saying, "Look, this is part of what

1 every, every lawyer needs in a capital case.

2 Q Whose responsibility ultimately is the mitigation
3 investigation?

4 A Well, it's, it's lead counsel.

5 Q Even when you hire or when counsel hires a mitigation
6 specialist?

7 A Yes. I mean, that's -- it's important that the lead
8 counsel does that, but ultimately it's, it's the captain of
9 the ship who has the responsibility for the guiding hand.

10 Q You may have described this earlier, but why exactly is
11 the social history investigation so important?

12 A Well, again, you're trying to humanize the, the client
13 for the jurors. You want them to understand that this is an
14 individual who had hopes, dreams, aspirations, shortcomings,
15 as well as strengths, somebody that they can identify with and
16 so that they can then begin to understand where did things
17 unravel, what went wrong here, how did this circumstance come
18 about that places this person in the dock as a capital
19 Defendant.

20 Q Could you describe the relationship between a thorough
21 mitigation investigation or social history evaluation and a
22 reliable mental health evaluation?

23 A Well, they're very closely connected. The social
24 history investigation it provides hard data independently
25 corroborated that did not come from the mouth of the, the

1 client. Experts are often going to be very vigorously cross
2 examined if their sole source of social history information is
3 what the client told them. So independently corroborated
4 social history is going to inform and provide a foundation for
5 a reliable assessment.

6 Q And should that social history evaluation be provided to
7 the mental health experts involved in the case?

8 A Yes. Your experts, you know, should be given as much
9 information as possible that is well documented about the
10 client's life, particularly in the developmental years.

11 Q Can you describe what would be, what the terms
12 integrated or unified mitigation theory mean?

13 A I think the unified theory refers to integrating the
14 mitigation into the whole defense theory of the case. I
15 mentioned earlier the Capital Jury Project was -- which has
16 interviewed a lot of real jurors who have served in capital
17 cases, and one of their findings is that a lot of jurors make
18 their decision about punishment during the first phase, and so
19 one of the practical conclusions from that research is that
20 you need to start propounding your mitigation theory early on
21 in the voir dire and in the, in the first phase of the case,
22 not just wait until conviction to present that evidence
23 because some jurors have already made up their mind.

24 Q Does some of that involve that the theory should be
25 consistent across different witnesses?

1 A Yes. I mean, that's another conclusion that kind of
2 accords with common sense. You can't just present
3 contradictory theories between the first and second phase.
4 If, if you put up a defense in the first phase that says, "I
5 didn't do it," and then you come in in the second phase and
6 say, "Well, yes, actually he is guilty and here's an
7 explanation of why it happened," then the, the -- you have no
8 credibility with, with jurors. If they've rejected what
9 you've offered in the first phase, then you're starting in a
10 much deeper hole in the second phase. So you want as much as
11 possible a consistent and unified theory, and this is not a
12 new idea. It's something that, you know, I was hearing at
13 training programs from the very beginning.

14 Q You've mentioned a couple of times the Capital Jury
15 Project. When was that research conducted?

16 A It started out in 1991, and they were funded by the
17 National Science Foundation. They do structured interviews
18 with jurors who have served in real cases, some that resulted
19 in death sentences, some that resulted in life sentences. The
20 structured interviews take three or four hours. They're
21 conducted by different academics all over the country, and
22 then each, each one writes up individual findings and they're
23 all on the website of the, of the project at the State
24 University of New York at Albany.

25 Q When did the Capital Jury Project start reporting

1 findings?

2 A By the mid, mid-90s, '95, '96.

3 Q We've talked about a mitigation theory. Is it
4 mitigating or is it a mitigation theory to present that the
5 Defendant is a psychopath or a person with antisocial
6 personality disorder?

7 A No.

8 Q Is that true in any court?

9 A From the mitigation perspective it is not mitigating
10 evidence.

11 Q In any of the trainings where you have been an
12 instructor or you have attended, has anyone ever advocated for
13 using psychopathy or antisocial personality disorder as a
14 mitigating theory?

15 A No. On the contrary, you're usually concerned about
16 that evidence being offered by the Prosecution, and so there's
17 been a lot of training addressing the issue in that context,
18 but it's, it's pretty well-established that it's, it's in
19 itself not going to be mitigating and you would never urge
20 Defense lawyers to use it.

21 Q Is it actually considered aggravating?

22 A Yes.

23 Q Why is that?

24 A Well, the whole -- let me, let me separate the, the two.
25 First of all, antisocial personality disorder is generally

1 viewed as the broader construct, that's actually recognized in
2 the diagnostic and statistical manual, and in general, there's
3 an assumption that if the construct of psychopathy exists, if
4 it's, if it's real, it's a subset of that, of that larger
5 group, but in both cases they enumerate traits of the
6 individual that are, you know, lawbreaking, callousness, lack
7 of empathy, all the sorts of things which are not going to
8 evoke empathy on the part of jurors.

9 Q Are there any particular reasons why a defense theory of
10 psychopathy related to an insanity defense would be a concern
11 at a capital trial?

12 A Yes. I mean, you do not want the words psychopathy
13 attached to your capital client. It has popular connotations
14 of Hannibal Lecter. It really is a dehumanizing concept, and
15 it's also putting the individual into a particular category
16 and saying he's just like all the other people in that
17 category rather than looking at him as an individual who is
18 complex, who is not just somebody who can be labeled in that
19 fashion.

20 Q In your experience are insanity defenses usually
21 successful?

22 A They are very rare and rarely successful.

23 Q Why is that?

24 A Well, again, both from my own experience and my review
25 of the literature they, they are empirically very, very rare,

1 something under one percent, maybe nine cases out of a
2 thousand was the figure quoted in, in one *Law Review* article,
3 but the people who are found not guilty by reason of insanity
4 is a very small subset, and usually it's people who have
5 previously been hospitalized for major clinical disorders and
6 in many cases actively psychotic. So if you look at the, you
7 know, what empirical literature there is in this area, you're
8 going to find that there are very, very few successful
9 insanity defenses other than those involving people with long,
10 well-documented histories of major mental illness.

11 Q Does that hold true in capital cases as well?

12 A You know, if anything, even more so.

13 Q And why is that?

14 A Well, you know, there was actually a study in Florida,
15 the -- in 2006 that compared the attitudes towards an insanity
16 defense of regular jurors and capitally qualified jurors, and
17 it found that capital jurors were even more skeptical of, of
18 an insanity defense.

19 Q Are there any other particular concerns with raising an
20 insanity defense in a capital trial as it relates to the
21 integrated theory of mitigation?

22 A Well, yes. Like I said, the issue of the integrated
23 theory relates specifically to having an insanity defense in
24 the first phase, saying to the jury, "Ladies and gentlemen,
25 this is a complete affirmative defense. It is an excuse," and

1 if the evidence is rejected for that purpose, if you then turn
2 around in the second phase and say, "Okay. It's not an
3 excuse. It's just a reason to spare the individual's life,"
4 the evidence has been rejected probably for all purposes. So
5 it really is just like any other kind of denial defense. It's
6 just like saying, "I didn't do it", in the first phase. It's
7 inconsistent.

8 Q How should a defense team approach a mitigation
9 investigation in creating a mitigating theory in a second
10 trial for the same Defendant?

11 A Well, I think in a second trial it's very, very
12 important to have completely fresh thoughts, reinvestigation,
13 new strategy and that's, that's regardless of the outcome of
14 the, of the first trial. You all, I'm sure, remember the
15 Oklahoma City bombing trial of Terry Nichols which was first
16 in federal court in Denver, came back with a life sentence,
17 and then Mr. Nichols was brought back to Oklahoma to face
18 similar charges in state court. They didn't just use the same
19 mitigation evidence that had been presented in the, in the
20 federal trial. They had a completely new set of themes. They
21 understood the importance of expanding their investigation,
22 and that's in a case where, where the first jury returned a
23 sentence of life. We often have the situation of a case that
24 comes back for re-sentencing as a result of a successful
25 appeal or a post-conviction application, and again, you can't

1 just then reuse the same evidence that got a death sentence
2 the first time or even just recycle the evidence that was
3 effectively presented in the post-conviction proceeding
4 because now all of that is well known to your adversaries in,
5 in the litigation. They're going to be ready for it, ready to
6 cross examine, and you just need a fresh look. So where
7 you'll come out is a whole separate question, but you have to
8 start with the assumption that it's important to, you know,
9 give this individual a full re-examination of potential
10 mitigation.

11 Q What should the makeup of the defense team be for a
12 second trial for the same Defendant?

13 A Well, the same core team should, should be there, two
14 lawyers, a fact investigator and a mitigation specialist. In
15 other words, you're not just reusing what's in the box from
16 the first trial. You're putting together a new team and
17 conducting a new investigation.

18 Q For a second trial would it be appropriate to have a
19 factual investigator and a mitigation specialists be the same
20 person?

21 A No. For the same reasons that I indicated earlier.
22 It's a different skill sets. There's plenty of work for each
23 one to do, and the reality is very, very few people are going
24 to have both sets of appropriate skills.

25 Q You mentioned that you taught some continuing legal

1 education related to capital cases in South Carolina. Was the
2 information that you've discussed today presented at those
3 CLEs?

4 A Yes. I mean, in fact, this is one of the topics that I
5 frequently present on.

6 Q And in 2006 you said you did a CLE in South Carolina.
7 What was that?

8 A That was a -- what we call a bring your own case capital
9 program and that was in Charleston in early 2006.

10 Q And what does the bring your own case seminar involve?

11 A Well, it's different from most of the programs that I
12 mentioned earlier, the typical CLEs that have just a series of
13 lectures. The bring your own case programs instead invite
14 capital defense teams to present their cases. So there'll be
15 a series of lectures as usual, but then small group
16 discussions to brainstorm those issues in the context of the
17 individual case. So if I gave a lecture on social history
18 investigation, mitigation investigation, then there would be a
19 follow-up discussion with the defense team saying, "Well, what
20 are the problems that you're encountering in your case? What
21 are the obstacles to disclosure of sensitive information?
22 What barriers are you having to overcome to establish a
23 relationship of trust with the family?" If somebody else
24 gives a lecture on mental health, then the brainstorming
25 session will have faculty and other teams sharing ideas about

1 the mental health ideas in the case.

2 Q And when you say the defense team, does that mean
3 everyone that you've previously mentioned, the two attorneys
4 and both the mitigation specialists and investigator?

5 A Yeah. Ideally we encourage the four members of the core
6 team to attend.

7 Q And was this geared toward state or federal practice?

8 A This was in -- exclusively for state court
9 practitioners. It was based on a, on a grant from the Bureau
10 of Justice Assistance, and the terms of the grant was that it
11 was for state court practitioners.

12 Q Do you know what specific session you taught at that
13 seminar?

14 A Yes. I believe I did the lecture on social history
15 investigation.

16 Q Are you aware of whether any members of Mr. Stanko's
17 defense team attended that bring your own case in 2006?

18 A Yes. I checked the attendee list, and Ms. Childs and
19 Ms. Davis were both registered.

20 Q And --

21 A I don't, I don't think I personally interacted with them
22 there, but they were both listed on the attendee list.

23 Q Do you know they specifically brought the Stanko case?

24 A Yes.

25 Q And --

1 A Would have been the, the Georgetown case at that point.

2 Q Uh-huh.

3 A And you fill out forms that describe the case that
4 you're bringing and, you know, what, what's the, the nature of
5 the evidence, what, what are the allegations, what mitigation
6 themes have you already identified, that the sort of thing.

7 Q Do you remember what the charge was for people to attend
8 that seminar?

9 A There was no charge at all. In fact, all expenses were
10 paid. I mean, that was -- because it was funded through this
11 Bureau of Justice Assistance grant.

12 Q At the time of Mr. Stanko's second case in Horry County
13 in 2009, if someone on the trial team had contacted you about
14 identifying a mitigation specialist, would you have been able
15 to help them with that?

16 A Sure. I mean, those, those sorts of questions came up
17 all the time. You know, and, and that was, you know, not as
18 part of my, my job, but just as, as, as somebody with
19 experience in this area, happened, you know, much, much longer
20 than I, than I've had my current job, get those phone calls
21 and e-mails.

22 Q Uh-huh. What are post-conviction counsel's duties with
23 regard to investigation?

24 A Well, in order to prevail on an ineffective assistance
25 claim in the area of failure to conduct thorough mitigation

1 investigation, you've not only got to establish the
2 deficiencies in the, in the work at trial, but you have to
3 show prejudice. So you have the same obligations to conduct a
4 thorough mitigation investigation.

5 Q And are attorneys always equipped to investigate mental
6 health issues without the assistance of experts?

7 A No. I'd say they're always not, not qualified.

8 Q Thank you. No further questions.

9 THE COURT: All right. Cross examination.

10 CROSS EXAMINATION

11 BY MR. ZELENKA:

12 Q Mr. Stetler, in September 2014 you state that you were
13 retained or became involved in Mr. Stanko's case?

14 A Yes.

15 Q And you were provided a summary of the facts on both the
16 Georgetown case and the Horry County trials?

17 A Yes.

18 Q Do you have those with you?

19 A No. I don't have anything with me.

20 Q Okay. Do you know whether the -- did you review the
21 transcripts of the trial to confirm the validity of the facts
22 that were presented to you?

23 A No. I reviewed the State Supreme Court opinions to get
24 an overview.

25 Q Okay. Now, as I understand your testimony, one thing

1 you've stated is the lawyer is the captain of the ship?

2 A Yes.

3 Q He makes the decisions as to what witnesses to put up
4 and what direction to take in the case; correct?

5 A Yes. Yes. I mean, in consultation with the, with the
6 team, but the ultimate responsibility rests with the lead
7 counsel.

8 Q Okay. And one of the concepts you talked about was
9 basically frontloading mitigation in the guilt phase; correct?

10 A Yes. Absolutely.

11 Q And one factor according to the ABA Guidelines it is one
12 of the most important factors are mental health issues;
13 correct?

14 A Yes. Mental health issues pervade these cases.

15 Q And the mental health issue -- the strongest mental
16 health issue is whether a Defendant, based upon his mental
17 disease or defect, lacks sufficient capacity to conform his
18 conduct to the requirements of law; correct?

19 A I'm, I'm not -- I'm not sure what, what you're asking.

20 Q One of the strongest mental health deficiencies is when
21 there --

22 A One, one of, one of them. Yes.

23 Q -- is when there's evidence that shows that the
24 Defendant --

25 A Yes.

1 Q -- lacks sufficient capacity --

2 A Yes.

3 Q -- to conform his conduct to --

4 A Yes.

5 Q -- the requirements of law; correct?

6 A Yes.

7 Q And that was essentially what the testimony was in the

8 guilt phase of this case; correct?

9 A Well, I'm, I'm afraid I'd say yes and no. There, there

10 was -- yes, in the, in the sense that there was what I would

11 call almost a neural determinism. Dr. Sachy testified

12 essentially that no one's making choices. It's just neurons

13 firing and, and, and that if your brain is not functioning

14 properly then you're not making choices.

15 Q Okay. So --

16 A Sorry for the long-winded paragraph.

17 Q So in cases in South Carolina when that's presented,

18 are you saying that's incompetent if it's done in the guilt

19 phase?

20 A No.

21 Q It's based upon the strategy the particular lawyer is

22 attempting to present at that time?

23 A Well, it is based on that strategy, but it also depends

24 on how you present that evidence, and again, I don't, I don't

25 think anyone is going to buy the, the idea of complete neural

1 determinism where it's just brain cells firing and nobody is
2 making any decisions or having any responsibility. I think
3 you have to present evidence of brain damage, for example, in
4 the, in the context of how it may have diminished somebody's
5 responsibility but not excused it.

6 Q Okay. In this case, and in this case I'm talking about
7 the Horry County case --

8 A I'm with you.

9 Q -- you reviewed the mitigation testimony of Dr. Sachy in
10 this case; didn't you?

11 A The, the, the mitigation or the guilt phase?

12 Q Well, let's go with the guilt phase.

13 A Yeah.

14 Q Yes.

15 A In any event, yes, I did, I did review his testimony.

16 Q And on direct examination he didn't assert that the
17 Defendant was a psychopath; did he?

18 A No. He used, used the term psychopath over and over in
19 this case.

20 Q In the guilt phase of the Horry County case?

21 A I believe so.

22 Q Okay. In the guilt phase of the Horry County case on
23 direct examination did he ever use the word psychopath?

24 A I don't have the transcript in front of me, but --

25 Q But it's your recollection that he did?

1 A It, it -- yes. That it pervade his testimony.

2 Q In the guilt phase of this case did he ever make
3 reference to Jeffrey Dahmer or Ted Bundy in the direct
4 testimony from Mr. Diggs?

5 A I, I don't remember whether it was in direct testimony
6 or, or on cross-examination, but I remember -- no. It must
7 have been on cross-examination because I believe the reference
8 to Mr. Bundy came up in the, in the context where he was
9 implying that there may be all kinds of additional criminal
10 acts that Mr. Stanko could have committed because he gave the
11 example of Mr. Bundy having been convicted of a dozen murders
12 but suspected of 40. So when he was asked in cross
13 examination what -- whether there were really just three
14 different victims of violence and only two incidents over Mr.
15 Stanko's entire life his response was, "That we know." So
16 you're, you're right. That was a cross-examination area.

17 Q Okay. In your direct testimony you stated essentially
18 that an insanity defense should not be given in a death
19 penalty case?

20 A No.

21 Q What exactly did you say then?

22 A I, I think what I was trying to convey is that there are
23 great risks to using an insanity defense, and couple that with
24 the statement I made earlier that insanity defenses succeed if
25 and only if you have a long well-documented history of major

1 mental illness, so not just something that your experts are
2 coming up with now but something that long preceded the
3 capital charges. So, so --

4 Q And where did you get that information?

5 A Well, again, that's from both experience and, and the
6 literature.

7 Q How many insanity cases have you ever been involved in
8 that have succeeded -- not succeeded in guilt where an
9 individual received a life sentence? Any?

10 A I don't, I don't know of -- no. I don't know of any.

11 Q Have you been involved in cases where an insanity
12 defense was presented and it resulted in death?

13 A I wasn't directly involved in, in the case, but there
14 was one in New York.

15 Q And you were part of the mitigation team in that case?

16 A No. Our, our office was, was conflicted in that case.

17 Q Okay. So how are you involved in it then? I'm
18 confused.

19 A No. Just involved was probably, probably the wrong
20 word. Was not, was not directly part of that team.

21 Q Okay.

22 A We -- our, our office had the case on appeal. So I did
23 have a subsequent involvement.

24 Q Okay. You stated, which sounded like a guideline, that
25 antisocial personality disorder is never a mitigating factor;

1 is that correct?

2 A Yes.

3 Q Have you ever read the case State versus Ricky Tim
4 Caldwell out of the South Carolina Supreme Court?

5 A No. I have not.

6 Q Are you aware that Mr. Ricky Tim Caldwell received a new
7 re-sentencing hearing because the Trial Judge failed to
8 instruct the jury on mitigating factors related to mental or
9 emotional disturbance at the time of the crime, capacity to
10 conform conduct to the requirements of law, was impaired based
11 upon testimony solely of antisocial personality disorder and
12 psychopathic personality?

13 A No. I do not know that case.

14 Q So you don't understand South Carolina law then;
15 correct?

16 A I, I never purported to be an expert on South Carolina
17 law, sir.

18 Q Well, what did you purport to be an expert on?

19 A On the investigation and presentation of mitigation
20 evidence.

21 Q Okay. With respect to the second trial, you're supposed
22 to have a fresh start?

23 A Yes.

24 Q Does that also mean new lawyers?

25 A Not necessarily.

1 Q Okay. Does it mean new mitigation investigator?

2 A Not, not necessarily.

3 Q Does it mean new fact investigator?

4 A No. Not necessarily.

5 Q What ABA Guideline are you referring to when you said it
6 needs to be new investigation, new strategy?

7 A Well, you know, there is a -- there's nothing directly
8 in the ABA Guidelines addressing --

9 Q Okay.

10 A -- addressing re-sentencing, but there is a guideline
11 that discusses the need in the post-conviction context to
12 rethink the theory of the case and not assume that everything
13 that has happened up to that point represents the only view of
14 the evidence or the only --

15 Q Okay. So you're -- so your statement that at the second
16 trial there has to be fresh thought, new investigation, new
17 strategies was not based upon the ABA Guideline?

18 A No. It's based on my own experience.

19 Q Okay.

20 A And I, and I should say similarly, you know, when we set
21 up the, the Capital Defender Office staffing in New York we
22 didn't look in a book for how to staff it. We drew on the
23 experience of people who had death penalty experience in
24 multiple jurisdictions around the country.

25 Q Okay. Just clarify for me, my ears aren't as good as

1 they used to be.

2 A Neither are mine.

3 Q With respect to the South Carolina CLE in 2006 you
4 participated in, did I hear you state that there were or were
5 not members of the Stanko defense team registered for that
6 seminar?

7 A Yes. The investigator and the mitigation specialist
8 registered.

9 Q Okay. And the investigator was Ms. Childs --

10 A Yes, sir.

11 Q -- and the mitigation investigator was Dale Davis?

12 A Ms. Davis. Yes. That's correct.

13 Q Okay. And there was a question stated that you could
14 identify for a Defense lawyer mitigation specialists in South
15 Carolina; is that correct?

16 A You know, I'm not sure whether I could have identified
17 somebody here. I could have identified people around the
18 country that might have been available, and I certainly could
19 have suggested people to talk to in this, in this state.

20 Q Okay.

21 A There was a directory of mitigation specialists that had
22 a few hundred names in it at that point.

23 Q Do you know who's in that directory?

24 A Offhand, no.

25 Q Do you know who is in that directory from South

1 Carolina?

2 A No. I don't know offhand.

3 Q Was Dale Davis in that directory?

4 A Probably.

5 Q Do you know whether she was the only one in that
6 directory at that time?

7 A I don't know.

8 Q Okay.

9 A I would, I would be surprised. I can think of not names
10 but faces.

11 Q Okay.

12 MR. ZELENKA: The Court's indulgence.

13 THE COURT: All right.

14 MR. ZELENKA: No further questions. Thank you, Your
15 Honor.

16 THE COURT: Redirect?

17 MS. VANN: Nothing further from the Applicant, Your
18 Honor.

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

20 A Thank you, Your Honor.

21 THE COURT: Thank you.

22 MS. VANN: Your Honor, could we take a short break?

23 THE COURT: Yeah. Let's go ahead and take about a 10, 15
24 minute break.

25 MS. VANN: Thank you.

1 Defendant shooting him in the back?

2 A. Unlikely, but it's possible.

3 MR. HUMPHRIES: Thank you.

4 THE COURT: Do you wish the witness to be excused?

5 MR. DIGGS: Yes.

6 THE COURT: Any objection?

7 MR. HUMPHRIES: No. Thank you, Your Honor.

8 THE COURT: All right, sir, you are released from your
9 Subpoena and you are excused and go back to regular duty, sir.

10 A. Thank you.

11 THE COURT: All right. Your next witness, please.

12 MR. DIGGS: Your Honor, we would call Bryan Wilson.

13 THE COURT: All right.

14 BRYAN WILSON, being first duly
15 sworn, testifies as follows:

16 DIRECT-EXAMINATION BY MS. WILLIAMS:

17 Q. And Mr. Wilson, can you tell us where you currently
18 live?

19 A. Goose Creek, South Carolina.

20 Q. And what is it that you do for a living?

21 A. I'm a retail manager for Bed, Bath and Beyond.

22 Q. And where did you grow up?

23 A. Hannahan, Goose Creek area.

24 Q. And do you know the Defendant in this case, Stephen
25 Stanko?

1 A. I do.

2 Q. Can you tell us when you first met Mr. Stanko?

3 A. We first met, I think, in the seventh grade at Sedfield
4 Intermediate -- or Sedfield Middle, I'm sorry.

5 Q. And can you tell us about -- did you have a
6 relationship with him from the seventh grade forward?

7 A. We did, as far as being friends and hanging out, as far
8 as playing baseball together and things like that.

9 Q. Did you graduate from Goose Creek?

10 A. I did, 1986.

11 Q. And so you and Steve were in the same class. Is that -
12 --

13 A. Same class.

14 Q. Okay. And you said y'all played baseball together.
15 Did you participate in any other school activities together?

16 A. We played on the J.V. football team, I think our
17 sophomore year.

18 Q. Okay. So I believe you -- and you characterize your
19 friendship -- your relationship as you guys were friends. Is
20 that right?

21 A. That's correct.

22 Q. All right. Tell me, if you could -- would you describe
23 him in high school for me, to the best of your recollection?

24 A. When I think about Steve ---

25 MR. HUMPHRIES: Your Honor, may we approach?

1 MR. HEMBREE: We might need to approach on this.

2 THE COURT: Yes. Y'all come around here, please.

3 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

4 Q. Mr. Wilson, let me ask you this question. Let me ask
5 you if you know about any occasion where Mr. Stanko was
6 injured at some point, if at all, during high school?

7 A. I do, as far as a situation in our senior year in high
8 school.

9 Q. Can you tell me about that?

10 A. Basically we went to a -- I think it was a high school
11 softball game up in Columbia, came back to meet the girls
12 after the game and so forth, in front of the gym. We waited
13 for the girls to come out. One of the girls was dating an
14 older guy, older than us, a couple of years old. Needless to
15 say, I think she got in the car with him, ended up being as
16 far as where he was beating her, or hitting her, or something
17 like that, so we tried to get the girl out. As we were doing
18 that one of our friends, Travis, grabbed the girl, the guy hit
19 him, a scuffle broke out into a fight, we grabbed Travis, or I
20 grabbed Travis into Steve, so Steve told me to take him off,
21 and what I remember is the fact the guy came out -- a guy was
22 coming out of the car, the guy who we actually got in a fight
23 with, spilling beer bottles, and hit Steve in the back of the
24 head.

25 Q. And he was hit in the head with what did you say? I'm

1 sorry.

2 A. A full beer bottle.

3 Q. A beer bottle. And then once he was hit in the back of
4 the head what, if anything else, do you recall about that?

5 A. Other than the incident. We grabbed Steve, put him in
6 my car, me and two other young ladies, as far as -- and tried
7 to take him to Minirev -- I think it's a clinic right there,
8 and so forth, where we lived. We couldn't go there because
9 they said they couldn't take him, or they were closed at the
10 time, I don't remember. We took him to the Naval Hospital
11 because he had -- he was bleeding and everything else in the
12 back.

13 Q. He was bleeding at that point?

14 A. He was.

15 Q. Do you recall if he was acting in any particular way,
16 one way or the other?

17 A. Other than at first he told us to go to Minirev, I
18 think because that's where he's from, and so grew up in the
19 area, and other than talking a little bit of gibberish, I
20 don't know exactly what it was, just kind of out of it a
21 little bit sort of. He wasn't like okay. He was not right so
22 -- as far as that aspect.

23 Q. Is it fair to say you guys were concerned enough you
24 took him to the hospital?

25 A. Yes, I mean, he was ---

1 Q. Do you have any recollection of how -- well, tell me,
2 once you got him to the hospital do you know what -- if
3 anything, what happened?

4 A. We took him to the hospital, left him there. I think
5 his parents were on the way up there. That's all at this
6 point -- I think it had to be a Thursday or a Friday night. I
7 don't remember.

8 Q. Do you have any recollection at all if he stayed in the
9 hospital, and if he did, how long?

10 A. I don't. I sure don't.

11 Q. Do you think he -- do you know if he was back in school
12 on Monday?

13 A. He was back at school on Monday, as far as I can
14 remember.

15 MS. WILLIAMS: One moment, please.

16 That's all the questions that I have. If you would,
17 please answer any questions the Solicitor may have.

18 THE COURT: Cross-examination.

19 MR. HEMBREE: Thank you. Thank you, Your Honor.

20 CROSS-EXAMINATION BY MR. HEMBREE:

21 Q. You indicated that Mr. Stanko got hit with the beer
22 bottle.

23 A. Yes sir.

24 Q. Y'all put him in your car. He was -- he was conscious
25 but kind of goofy?

- 1 A. You could say that.
- 2 Q. Yes. I mean, when I say goofy, just ---
- 3 A. Yes. It wasn't like me and you as in, I got hit. He
- 4 was kind of like out of it, a little goofy, yes.
- 5 Q. Goofy.
- 6 A. Uh huh (*indicating positive*)
- 7 Q. He was bleeding?
- 8 A. Correct.
- 9 Q. Some blood. That concerned you.
- 10 A. Correct.
- 11 Q. And now he told you where to take him?
- 12 A. At first. I mean, as far as, I guess -- we were trying
- 13 to get him in the car. We kind of helped him into the car, or
- 14 picked him up, whatever it was, I don't remember. It was me
- 15 and another young lady. She held his head. I remember she's
- 16 sitting in the back holding his head, to keep him from
- 17 bleeding all over my car, but ---
- 18 Q. Yes. I've got you. But he told you -- I mean, he had
- 19 the presence of mind at least to say, take me to ---
- 20 A. At first, yes.
- 21 Q. ---Such and such place, and then that didn't work out.
- 22 A. And we ended up going to the Naval Hospital because he
- 23 was a military -- I know his dad was.
- 24 Q. Right. And did he start acting not so goofy pretty
- 25 quickly?

1 A. Again, hard to remember. I remember talking -- he was
2 kind of like talking in different -- just kind of off the wall
3 stuff, I guess, not what was happening, this situation at the
4 time.

5 Q. I've got you. And you dropped him off at the hospital
6 and that was ---

7 A. We took him into the emergency room. We stayed there
8 for a little bit and then we left.

9 Q. And he was back at school on Monday?

10 A. Yes.

11 MR. HEMBREE: Fair enough. Thank you, sir.

12 THE COURT: Do you wish the witness to be excused?

13 MR. DIGGS: Yes, Your Honor.

14 THE COURT: All right. Any objection?

15 MR. HEMBREE: No objection, Your Honor.

16 THE COURT: All right, sir, you are released from your
17 Subpoena. You may go back to your regular duties.

18 A. Thank you.

19 THE COURT: Next witness, please.

20 MR. DIGGS: Your Honor, we would call Dr. James
21 Thrasher.

22 THE COURT: All right.

23 MR. DIGGS: Your Honor, we are going to try to use
24 this. I don't know exactly how to operate it, so if you could
25 bear with me for just a few seconds until I get it set up.

James Austin

MAJOR POSITIONS HELD

2003 – Present	<i>President, The JFA Institute, Washington, D.C.</i>
1999 -2003	<i>Research Professor and Director, Institute for Crime, Justice, and Corrections, Department of Sociology, The George Washington University, Washington, D.C.</i>
1982 - 1998	<i>Executive Vice President</i> National Council on Crime and Delinquency San Francisco and Washington, D.C.
1974 - 1982	<i>Research Associate</i> National Council on Crime and Delinquency San Francisco
1970 - 1974	<i>Correctional Sociologist</i> Illinois Department of Corrections Joliet, Illinois

EDUCATION

B.A.	1970, Wheaton College, Wheaton, Illinois, Sociology
M.A.	1975, De Paul University, Chicago, Illinois, Sociology
Ph.D.	1980, University of California, Davis, California, Sociology

RELEVANT PROFESSIONAL EXPERIENCE

2015 – present	MacArthur Foundation Safety and Justice Challenge in which JFA is responsible for working with 20 local counties to design and implement plans to lower current jail populations by 15-30%.

2016 – present	Maryland Department of Public Safety and Correctional Services, Technical Assistance funded by Open Society Institute-Baltimore.
2012 - present	Orleans Parish Prison Population Projections and Jail Reduction Strategic Plan.
2014 - present	Validation study of the San Francisco Adult Probation Risk and Needs Assessment System (COMPAS), San Francisco County.
2005 – 2014	Director, Design and Evaluation of the Maryland Department of Public Safety and Corrections (MDPSC) Risk and Case Management System (Parole, Probation and Prison). MDPSC and Open Society Institute-Baltimore.
2014 - 2015	Master Jail Plan, Sonoma County.
2011 – 2016	Monitor, Consent Decree, Walnut Group Correctional Facility, Mississippi Department of Corrections (adult and juvenile populations)
2010 – 2014	Consultant. Technical Assistance on Solitary Confinement in Maryland, New Mexico, and Illinois. Vera Institute.
2011 – 2015	Director, Los Angeles County Sheriff Jail Population Projections and Impact of AB 109. Funded by Public Welfare Foundation.
2013-2014	Evaluation of the Contra Costa Probation Department's Response to AB 109- Realignment.
2012-2013	Evaluation of Alternatives to Incarceration, San Diego County.
2012 – 2013	Evaluation of the Short-Term Technical Violation Pilot Study. U.S. Parole Commission.
2012	Co-Director. Evaluation of the Oklahoma Administrative Segregation System. Oklahoma Department of Corrections.

2011 - 2012	Consultant. Study of Colorado Administrative Segregation System. Colorado Department of Corrections and National Institute of Corrections, U.S. Department of Justice.
2010 – 2011	Co-Director, Revalidation of the Texas Pardon and Parole Board System. Texas Pardon and Parole Board.
2009 – 2012	Director, Prison Population-Justice Re-investment Initiative. Pew Charitable Trusts.
2010 – 2011	Special Consultant, Jail Population Projection Study, US Department of Justice and Orleans Parish.
2008 – 2009	Special Consultant, Administrative Segregation/Super Max Parchment Study. Mississippi Department of Corrections and ACLU
1998 – 2011	<i>Director</i> , Correctional Options Program (Bureau of Justice Assistance, U.S. Department of Justice)
2007 – 2008	Director, Harris County Pretrial Services Re-Validation Risk Assessment Study. (Harris County, Texas).
2005 – 2008	Director, Montgomery Pretrial Services Risk Assessment Validation Study. (Bureau of Justice Assistance, U.S. Department of Justice).
2003 – 2006	<i>Director</i> , Assessment of Sexual Assault in the Texas Prison System. (National Institute of Justice).
2002 – 2006	<i>Director</i> , Parole Guidelines System Project, Maryland Parole Commission. (Baltimore Open Society Institute).
2003 – 2006	<i>Director</i> , Validation Study of the Alameda County Juvenile Detention Risk Assessment System (Alameda County, California).
2002—2006	<i>Independent Expert</i> , Office of Youth Development, Louisiana Department of Public Safety and Corrections, Jointly Appointed by State of Louisiana and U.S. Department of Justice, Civil Rights Division

2003-2004	<i>Director</i> , Evaluation and Redesign Of Systems For Berks County Pretrial and Sentenced Populations. (Berks County, PA).
2002 – 2003	<i>Director</i> , Validation of the Pennsylvania Parole Guidelines. Pennsylvania Board of Probation and Parole. (Pennsylvania Commission on Crime and Delinquency).
2001 – 2003	<i>Director</i> , Development of the Kentucky Parole Risk Assessment System. Kentucky Parole and Pardon Board.
1998 – 2004	<i>Monitor</i> , Georgia Juvenile Justice Corrections System, Jointly Appointed by State of Georgia and U.S. Department of Justice, Civil Rights Division.
1997 - 2002	<i>Director</i> , National Technical Assistance Program for External Prison Classification Systems (Oregon, Wisconsin, Virginia, Tennessee, Texas, Oklahoma, and Montana) (National Institute of Corrections)
1996 - 2002	<i>Director</i> , National Technical Assistance Program for Internal Prison Classification Systems (Washington State, Oregon, Missouri, South Dakota, Connecticut, Colorado, and Florida)
1996 - 1999	<i>Director</i> , National Survey of Juveniles in Adult Correctional Facilities (Bureau of Justice Assistance), GWU.
1996 - 1999	<i>Director</i> , National Multi-Site Boot Camp Evaluation (Adult and Juvenile) (National Institute of Justice), GWU.
1995 - 1999	<i>Director</i> , Evaluation of “Three Strikes and You're Out” Laws in California and Nationally, (National Institute of Justice), NCCD
1996 - 1999	<i>Director</i> , National Survey of Privatization in Corrections (adult and juvenile facilities) (Bureau of Justice Assistance), NCCD.

1992 - 1997	<i>Director, Correctional Options Evaluation (National Institute of Justice and Bureau of Justice Assistance), NCCD</i>
1997	<i>Director, Congressionally mandated evaluation of the D.C. Department of Youth Services Agency (YSA) operations, classification system, staffing levels, physical plant, mental health, information services and program services, (National Institute of Corrections, Bureau of Prisons), NCCD</i>
1992 - 1997	<i>Director, National Structured Sentencing Evaluation (Bureau of Justice Assistance), NCCD</i>
1995 - 1997	<i>Director, Congressionally mandated evaluation of the D.C. Department of Corrections operations, classification system, staffing levels, and physical plant, including, comprehensive cost analysis of long-term options for the Lorton Complex, (National Institute of Corrections, Bureau of Prisons), NCCD</i>
1991 - 1997	<i>Director, Design and Implementation of the New York City Department of Corrections Objective Jail Classification System (Consent Decree, New York City Department of Corrections), NCCD</i>
1991 - 1995	<i>Director, Philadelphia Prison System Classification and Population Projections Project (Consent Decree, City of Philadelphia), NCCD</i>
1991 - 1994	<i>Director, Evaluation of Jail Drug Treatment Programs (National Institute of Justice), NCCD</i>
1990 - 1993	<i>Director, Evaluation of the Los Angeles Sheriff's Boot Camp Program (National Institute of Justice), NCCD</i>
1991 - 1993	<i>Director, Design and Implementation of the Cook County Objective Jail Classification System (Cook County Sheriff's Department), NCCD</i>
1990 - 1991	<i>Director, California Assessment of the Overrepresentation of Minority Youth in Juvenile Justice (Office of Criminal Justice Planning), NCCD</i>

1988 - 1992	<i>Director</i> , Experimental Test of Electronic Monitoring Program, Oklahoma Department of Corrections (National Institute of Justice), NCCD
1987 - 1992	<i>Director</i> , Experimental Test of the Prison Management Classification System (National Institute of Corrections and Washington Department of Corrections), NCCD
1986 - 1990	<i>Director</i> , National Jail Classification Project (NIC), NCCD
1985 - 1987	<i>Co-Director</i> , California Youth Authority Parole Risk Study (Packard Foundation and CYA), NCCD
1984 - 1986	<i>Co-Director</i> , Study of Institutional Violence at San Quentin (Consent Decree, California Department of Corrections, NCCD
1982 - 1987	<i>Co-Director</i> , Experimental Study of Juvenile Court Probation Services, Salt Lake City, Utah (OJJDP), NCCD
1983 - 1985	<i>Co-Director</i> , Illinois Department of Corrections Early Release Evaluation (NIJ), NCCD
1980 - 1984	<i>Co-Director</i> , Supervised Pretrial Release Test Program (NIJ/LEAA), NCCD
1981 - 1983	<i>Co-Director</i> , Evaluation of California AB2 Bail Reform Act (OCJP), NCCD
1980	<i>Senior Research Associate</i> , California Alternatives to Incarceration Study (State Legislature), NCCD

SPECIAL APPOINTMENTS

2006 – 2007	Expert Panel on Adult Offender and Recidivism Reduction Programming, California Department of Corrections and Rehabilitation
2003	Advisory Committee, The Little Hoover Commission Report on California Prison System
1999- 2003	Chair, National Policy Committee, American Society of Criminology

1987 - 1994	Trustee, Robert Presley Institute of Corrections Research and Training
1991	Governor's Task Force on Prison Crowding, State of Nevada
1988	Governor's Task Force on Corrections, State of Oregon
1981, 1986	National Academy of Sciences, National Panels on Sentencing and Prison Overcrowding

EXPERT WITNESS/LITIGATION

1987 - 1989	Office of the Special Masters, <u>Ruiz v. Lynaugh</u> , Evaluation of the TDC Classification System and Inmate Violence Appointed by Court to produce evaluation report of classification system to determine if inmate violence had been reduced.
1989 - 1991	U.S. Department of Justice, Civil Rights Division, <u>U.S. v. State of Florida: Florida Department of Corrections, et al.</u> , Case No. TCA 86-7330 (N.D. Fla) Expert Witness Retained by Plaintiffs to determine whether women should be excluded from certain post positions in the DOC.
1990 - 1991	King County (Seattle, Washington) District Attorney's Office, <u>Hammer v. King County</u> Expert Witness Retained by Defendants to determine if minority staff was being discriminated against.
1990 - 1991	Office of the Attorney General, State of Texas, <u>Lamar v. Collins</u> Expert Witness Retained by Defendants to determine if use of local incarceration rates by selected counties was appropriate.

1991	Office of the Attorney General, State of Texas, <u>Alberti v. Sheriff of Harris County, et al., No. CA-H-72-1094</u>
	Expert Witness Retained by Defendants to determine if use of local incarceration rates by selected counties was appropriate.
1991 - 1992	U.S. Department of Justice, Civil Rights Division, <u>U.S. v. The Parish of Orleans Criminal Sheriff's Office</u>
	Expert Witness Retained by Plaintiffs to determine the appropriateness of excluding females from certain post positions within the jail.
1991 - 1994	<u>Calvin R. vs. Illinois Department of Corrections.</u> Consent Decree.
	Appointed by Court to produce evaluation of classification system and to implement internal classification system to reduce inmate violence.
1995	<u>International Fidelity Insurance Co. et al. v. Charles Nobel et al.</u> In the United States District Court of the Southern District of Texas, Houston Division.
	Expert Witness Retained by Defendants to determine the Failure to Appear rates for defendants released on surety bond versus O.R.
1995	<u>Sandra Herrera, et al., v Pierce County, et al.</u>
	Retained by Plaintiffs to evaluate whether inmates were being properly classified and housed in the local jail.
1995 - 1996	<u>Montoya v. Gunter, et al.</u>
	Retained by Defendants to determine whether inmate who was killed while incarcerated had been properly classified and housed.
1995 - 1997	<u>Inmates A,B,C and D v. Illinois Department of Corrections</u> Consent Decree

Appointed by Court to produce evaluation of the level of control of housing and job assignments by gangs.

1995 - 2002

USA v. Michigan and Cain v. Michigan Consent Decrees

Expert witness retained by Defendants to help Department of Corrections reach compliance with court order regarding classification system.

1996

Rentschler v. Carnahan et al.

Retained by Defendants to evaluate the impact of crowding at the Colorado maximum security prison.

1997

Carlos Morales Feliciano v. Pedro Rossello Gonzales Consent Decree

Retained by Special Master to conduct a comprehensive assessment of the inmate classification system that was designed and partially implemented by the Administration of Corrections.

1998 - 1999

Southern Ohio Correctional Facility (Civil Action No. C-1-93-436).

Retained by the Ohio Department of Rehabilitation and Correction to serve as an expert witness on classification issues as they pertain to the Lucasville riot.

1998 - 1999

Busey et al. v. Corrections Corporation of America

Retained by CCA to develop an objective classification system for the Youngstown facility and have all inmate's properly classified according to the classification criteria. No expert report, deposition or court testimony.

1998 - 2000

Holloway, et al., v. King County

Retained by plaintiff's counsel to examine the validity of client's claims that sexual harassment of female correctional officers by male inmates was being

encouraged by male correctional officers and departmental policy. Declaration and deposition.

2001

Gartrell et al., v. Ashcroft et al.

Retained by plaintiffs to examine if BOP inmates placed in Virginia Department of Corrections are unnecessarily having their expression of religious freedoms unnecessarily restricted? Report submitted but no deposition or court testimony.

2001 - 2005

Austin, et al., v. Wilkinson, et al.

Retained by defendants to examine the classification process used to assign inmates to the Ohio State Penitentiary – a high maximum security prison. Expert report but no deposition or testimony.

2008- present

Plato and Coleman v. Schwarzenegger.

Retained by plaintiffs to develop plan to depopulate the California Prison Population. Reports submitted and deposed by defendants, two expert reports submitted and court testimony.

2013 - 2014

Coleman v. Brown

Expert declaration, deposition and court testimony in support of plaintiff's motion regarding mentally ill inmates in segregation.

2012

Louis Henderson, et al., v. Kim Thomas

Expert declaration and testimony on behalf of plaintiffs on the appropriateness of segregating inmates based on HIV status (Alabama). Court ruled in favor of plaintiffs.

2016 - present

Mark Duke, et al., vs. Jefferson S. Dunn

Expert declaration on behalf of plaintiffs on proper classification of inmates at the St. Clair prison facility (Alabama). Stipulated agreement designated Dr. Austin as expert for the DOC to implement reforms.

2016 - present

Stephen Rudisill v. Charles Ryan

Appointed as expert to monitor stipulated agreement where the Arizona Department of Corrections agrees to desegregate their inmate population in housing and program assignments.

MAJOR PUBLICATIONS

Books

- 2011 It's About Time: America's Imprisonment Binge (with John Irwin), 4th Edition, Cengage, Publishing.
- 1993 Reinventing Juvenile Justice (with Barry Krisberg), Beverly Hills, CA: Sage Publications.
- 1978 The Children of Ishmael: Critical Perspectives on Juvenile Justice (with Barry Krisberg),

Articles

- 2010 "Reducing America's Correctional Populations", 2001. Justice Research and Policy, Vol, 12, No. 1, pp,1-32.
- 2009 "Prisons and the Fear of Terrorism." August 2009. Criminology and Public Policy. Vol., Issue 3: 641-649.
- 2009 "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs." 2009. Criminal Justice and Behavior. Vol. 36, No. 10: 1025-1037.
- 2006 "How Much Risk Can We Take? The Misuse of Risk Assessment in Corrections." 2006. Federal Probation. Vol. 70, No. 2: 58-63.
- 2004 Richards, Stephen C., James Austin, and Richard S. Jones. 2004. "Thinking About Prison Release and Budget Crisis in the Blue Grass State." Critical Criminology: An International Journal, Vol. 12, No.3: 243-263.
- 2004 Richards, Stephen C., James Austin, and Richard S. Jones. 2004. "Kentucky's Perpetual Prisoner

- Machine: It's All about Money." Review of Policy Research, Vol. 24, No. 1 (at press).
- 2003 "Why Criminology Is Irrelevant", Criminology and Public Policy, Vol. 2, No.3: 557-564
- 2003 "Three Strikes Laws", in Current Controversies in Criminology, Ronald Weitzer, ed., Prentice Hall: Upper Saddle River, NJ.
- 2003 "The Use of Science to Justify The Imprisonment Binge", Convict Criminology, Jeffrey Ian Ross and Stephen C. Richards, eds., Wadsworth: Belmont, CA.
- 2003 "Its About Time: America's Imprisonment Binge", Punishment and Social Control, Aldine De Gruyter: New York, NY.
- 1999 "Are We Better Off? Comparing Private and Public Prisons in the United States", Current Issues in Criminal Justice. Vol. 11 (2): 177-201.
- 1999 "The Impact of 'Three Strikes and You're Out'", Punishment and Society, Vol 1(2): 131-162.
- 1998 "The Limits of Prison Drug Treatment", Corrections Management Quarterly, Vol. 2, Issue 4, Fall 1998, pp. 66-74.
- 1996 "The Effect of 'Three Strikes and You're Out' on Corrections" in Three Strikes and You're Out: Vengeance as Public Policy, David Shichor and Dale K. Sechrest, eds., Sage Publications: Thousand Oaks, CA.
- 1996 "Are Prisons A Bargain? The Case of Voodoo Economics", Spectrum, Spring 1996, pp. 6-24.
- 1995 "The Overrepresentation of Minority Youths in the California Juvenile Justice System: Perceptions and Realities" in Minorities in Juvenile Justice, Kimberly Kempf Leonard, Carle E. Pope, and William H. Fyerherm, eds., Sage Publications: Thousand Oaks, CA.

- 1994 "Three Strikes and You're Out: The Likely Consequences". St. Louis University Public Law Review, 14, 1, pp. 239-258.
- 1993 "Classification for Internal Purposes: The Washington Experience" (with Chris Baird, and Deborah Nuenfeldt), Classification: A Tool for Managing Today's Offenders, Laurel, MD: American Correctional Association.
- 1993 "Objective Prison Classification Systems: A Review", Classification: A Tool for Managing Today's Offenders, Laurel, MD: American Correctional Association.
- 1986 "Using Early Release to Relieve Prison Crowding: A Dilemma in Public Policy," Crime and Delinquency (October):404-501
- 1986 "Evaluating How Well Your Classification System Is Operating," Crime and Delinquency (July):302-321
- 1985 "Incarceration in the United States: The Extent and Future of the Problem," The Annals (March):15-30
- 1983 "Assessing the New Generation of Prison Classification Models," Crime and Delinquency (October):561-576
- 1982 "Do We Really Want to Get 'Tough on Crime'?" Corrections Today, Vol. 44, No. 6:50-52
- 1982 "Bail Reform in California: The Passage of AB2" (with E. Lemert), Pretrial Services Annual Journal, 1982, Vol V:4-23
- 1982 "Review of Fatal Remedies: The Ironies of Social Intervention" (Sam D. Seiber) in Crime and Delinquency, Vol. 20, No. 4:639-641
- 1982 "The Unmet Promise of Alternatives to Incarceration" (with B. Krisberg), Crime and Delinquency, Vol. 28, No. 3:374-409
- 1982 "Promises and Realities of Jail Classification," Federal Probation, Vol. 46, No. 1:58-67

- 1981 "Wider, stronger, and different nets: the dialectics of criminal justice reform" (with B. A. Krisberg), Journal of Research in Crime and Delinquency, Vol. 18, No. 1:165-196
- 1980 Instead of Justice: Diversion,
Ph.D. Dissertation, University of California, Davis

AWARDS

- 2009 Recipient of the Marguerite Q. Warren and Ted B. Palmer Differential Intervention Award, American Society of Criminology, Corrections and Sentencing Division
- 1999 Recipient of the Paul Tappin award for outstanding contributions in the field of criminology, Western Society of Criminology
- 1991 Recipient of the Peter P. Lejins Research Award, American Correctional Association

DEFENSE OF INDIGENTS VOUCHER

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NON INCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT 803.734.1343, FAX: 803.734.1345, e-mail: executive@scoid.state.sc.us, BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER along with one copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11433, 1122 Lady Street, Suite 1110, Columbia, SC 29211. Please insure that all supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed, but in no event later than June 30th of the year services were completed, in order to be paid.

County Georgetown Client's Full Name: Stephen Christopher Stanko Last Known Address (prior to incarceration): 	List All Case Numbers (SS, CP, JU or Arrest Warrant Numbers): 05-GS-22-918 List All Charges: CSC1st; MURDER, ABWIK; KIDNAPING; GL
Voucher Submitted Under Seal? ☐ YES ☒ NO Previous Vouchers Submitted For This Client at this level (Trial or Appeal)? (Mistrial/Retrial are considered new cases) ☐ YES ☒ NO	Type of Case (Most Serious Charge): ☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Status Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ SVP ☐ Other

Pursuant to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS FEES

NON DEATH PENALTY CASE FEES

Hours at \$40.00 per hour for Out-of-Court services.....	\$
Hours at \$60.00 per hour for In-Court services (Restricted to actual hearing times).....	\$

DEATH PENALTY CASE FEES

574.65 Hours at \$50.00 per hour for Out-of-Court services.....	\$27,232.50
121.5 Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times).....	\$9,112.50

TOTAL FEES: \$36,345.00

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$3,500 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,750 in SVP cases.

EXPENSES

Long Distance Telephone Calls.....	\$
Psychiatric Examination.....	\$
Expert Witness(es).....	\$
Investigative Services.....	\$
Extraordinary Travel Expenses: 4300 miles x 0.34/mile	\$1462.00
Advanced Payment For Expenses.....	\$
Other Expenses (Explain): PRINTING \$310.64; Lodging \$1976.20	\$2286.84

***REQUIRES PRE-APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT — ORDER MUST STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE! Please read instructions on what expenses are reimbursable.**

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.)..... **\$3743.84**

MAXIMUM EXPENSES allowed are \$20,000 in Death Penalty cases and \$500 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf..... **\$-0-**

TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$40,088.84

☐ Advance payment. Date of request for funds (Approval Order attached): _____, 20____
☒ Final submission; no further requests for funds. Date case concluded: **1006**, 20**06**
 Method of Disposition: ☐ Plea ☒ Trial: ☐ Acquittal ☒ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other

This is a true and correct statement of my service to and expenses for the above named Defendant.

Attorney's Signature Gerald A. Kelly	Attorney's Signature

Check Applicable Category: ☐ Public Defender ☒ Private Attorney	Check Applicable Category: ☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.E.I. NUMBER MUST BE INCLUDED.

Name and Address of Check Payee:
Gerald A. Kelly
4760 Gemassee Hwy.
VARNVILLE, S.C. 29944

SS or F.E.I. Number: _____	TELEPHONE NUMBER: 803.943.0510

Trial Judge's Signature
Court or Circuit
Date Approved
Clerk of Court's Signature
Clerk of Court For (County):
Date Certified:
OID FILE NO.:
AGENCY VOUCHER NO.:

OFFICE OF INDIGENT DEFENSE ATTORNEY'S TIME SHEET

vs. Stephen C. Stanko
CASE NUMBER(S): 05-GS-22-918

PLEASE TYPE OR PRINT LEGIBLY

PAGE 1 of 8

1	093105	J. Jefferson calls. I am appointed. I call Atty Dispos			
2		& Guido. I open notebook.		0.45	
3	090105	2 rec. call WID. Retain VDC & DMD ok.		0.75	
4	090805	2 rec. Scheduling Order. I call clerk & DMD.		0.35	
5	091905	2 rec. Trial Order + warrants. I call GTDC. I letter			
6		cl. I call WID.		1.45	
7	092005	I call WID, VDC, DMD, SCOLD		0.25	
8	092105	I travel to client. 3.0 hr w/c WID, YB	301	12.0	
9	093005	Packed from WID. I examine packet.		1.50	
10	100505	2 rec. packet & wit. list.		1.0	
11	100605	2 complete packet. Atty Opin. on Motive		3.35	
12	100705	Conference call JJ. Atty Guido to be relieved.		0.15	
13	101405	2 rec call JJ. 2 review file for timeline.		2.5	
14	102105	Conference call. Scheduling Order agreed.		0.90	
15	102605	Coastal Observer.		0.25	
16	102705	2 rec. Copy scheduling order + review notes.		1.15	
17	102805	Call from Conway Solicitor office - 2 review		1.10	
18	103005	2 rec. 3 packages of discovery.		1.15	
19	110705	2 prepare orders for travel, copy to investigator.		3.0	
20		Letter to all. Call clerk.			
21	111705	Ltr. WID fax VDC + DMD		0.15	
22	112805	2 rec. 453 photos + medical releases		1.70	
23		I listen to 6 tapes + summarize		6.65	
24	120205	2 rec. order relieving Guido & packet from WID.		0.55	
25	120805	2 rec. order & open notebooks + cont discovery		4.45	
I hereby certify to the Court that the information set forth on this time sheet accurately reflects the time and activities performed by me for the above named client.			TOTAL FOR THIS PAGE:	310	44.8
Signature: <u>Guadalupe Kelly</u> Date: <u>110706</u>			TOTAL FOR ALL PAGES:	310	44.8

ORIGINAL AND (2) Local Duplicates to be retained.

PRIV #
3459

2-101

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

FILE TYPE OR PRINT LEGALY

PAGE 2 of 8

1	121105	I prepare 1 st draft of Order Investigator		1.65	
2	121205	2 complete draft + mail to J.J.		0.75	
3	121305	2 travel GTDC met cl 3+ hrs. ref 10:00pm	304	10.50	
4	121405	2 rec. interviews		2.75	
5	122205	All discovery is HLT. Analysis of HLT facts		4.5	
6	122705	2 can't discovery		0.45	
7	122805	2 can't discovery		1.0	
8	010506	VCEmail; 2 can't discovery, edit time line.		3.0	
9	010506	Through #53		2.25	
10	010906	Email JJ		0.35	
11	011006	Chandra, JJ, email DMD + VDC calls; 2 agree		0.35	
12	011006	copy file. Printers. 2 rec. order to retain.		2.0	
13	011106	1.5 DMD call. Printers. Fax list + info.		2.0	
14	011206	2 give notice to GTDC of DMD + VDC. Fax		0.50	
15	011206	2 examine DASMOMD for Narcissistic PD		1.75	
16	011306	Copies from printer; Sort; notify; can't discovery.		3.5	
17	011606	1 L911 tape outline/copy; fax; DMD		3.25	
18	011606	Attorney's Opinion. Discovery E. Apparent defense		2.70	
19	011706	2 meet w/DMD in Beaufort. Review 2 copies of file. Had met cl.	88	3.35	
20	011906	Voucher meet WID		0.25	
21	020206	VDC email. Cl concerns. A Hy's Op.		0.45	
22	020206	HLT complete. GTC Discovery A		2.0	
23	020606	A Hy Op. on death LL. Similarities w/ MG/enders		6.0	
24	020606	Can't discovery		2.5	
25	020806	Complete Dis A+B, A Hy Op. on Proof.		6.5	
I hereby certify to the Court that the information reflected on this time sheet accurately reflects the time and activities performed by me for the above named client.				TOTAL FOR THIS PAGE	
Signature: <u>Graci Kelly</u>				392	64.3
Date: <u>11/07/06</u>				TOTAL FOR ALL PAGES	
				702	109.1

vs. Stephen C. Stambio
CASE NUMBER: 05-68-22-918OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

PLEASE TYPE OR PRINT LEGIBLY

PAGE 3 of 8

1	022206	Re discovery request. To Solicitor from WID.		0.35	
2	022806	VDC calls. Wants L. discovery & mail timeline		0.50	
3	022806	VDC & DMD visit. L. request WID be replaced.		0.45	
4	030406	Travel to GTDC. Examine complaint	280	10.5	
5	030606	Conference call. SH agrees to 10 day response. WID advised by letter.		0.45	
6	030606	2 research fix & mail documents to cl.		1.25	
7	030706	Open trial calendar. Discovery D		0.75	
8	030806	DMD has Cynthia L. Mone occupation.		2.0	
9	031306	Call from J.J. Atty. General notice.		0.25	
10	031406	WID calls + conference w/ Atty. Gen., WID motion & meeting with		1.0	
11	031506	DMD + VDC calls + emails.		0.85	
12	031606	2 travel to GTDC meet cl. 1.5 hr. WID + JB. JJ calls.	360	16.0	
13	031706	2 travel to GTCH; history. hearing held.	302	12.0	2.0
14	031906	2 redid + render Op. 2 prepare proposed order.		4.0	
15	032006	2 edit order & mail out.		1.75	
16	032206	Call from WID on experts. 2 render opinion.		1.0	
17	032306	S. Young calls twice. 2 correct order		0.45	
18	032406	2 letters WIP w/ photo of car. Long talk w/ DMD			
19		concerning evidence & memo - psy.		1.75	
20	032706	2 travel to WID + meet w/ DMD & VDC + WID	340	13.0	
21	032806	2 render opinion. 2 mail copies of Order.		2.0	
22	041106	2 rec. transport Order. 2 open file on Terry			
23		Quentin - 2 examine scheduling order & trial notes		1.85	
24	041706	2 mail MISC. pamphlet to WID		0.25	
25	042506	2 Rec call Mr. Cohen of "48 Hours. 2 up to WID.		0.15	
I hereby certify to the Court that the information set forth on this time sheet accurately reflects the time and activities performed by me for the above named client.			TOTAL FOR THIS PAGE:		
Signature: Gerald Kelly			1290	72.55	2.0
Date: 11/07/06			TOTAL FOR ALL PAGES:		
			1992	181.65	2.0

The State,

vs. Stephen C. Stankos

CASE NUMBER: 05-GS-22-918

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

PLEASE TYPE OR PRINT LEGIBLY

PAGE 4 of 8

1	042706	2 review Juror Ps; 2 fax WID; 2 call S. Young		1.0	
2	050106	2 prepare for conference call.		1.0	
3	051106	2 rec. fax from WID on transport & evaluation.		0.15	
4	051606	2nd call from "48 Hours" producer.		0.15	
5	051806	WID calls on motorist conference. 2 remind of insanity issue. Experts not informed of facts.		0.55	
7	051906	2 research & prepare for conference call.		1.50	
8	053006	2 rec. 2 letters concerning interview of cellmate.		1.35	
9	060506	2 letter cl.		0.25	
10	061006	2 travel to G TDC & meet c/f for 3 hrs.	340	11.0	
11	061206	2 call WID & research kidnapping.		2.0	
12	061306	JJ calls. WID calls. 2 demand movement on 68 MI.			
13		Discussion of defense. Review Rule 5.		2.45	
14	062006	2 call WID. 2 work on discovery. WID calls on imaging results.		3.45	
16	062206	Hearing G.T. Dr. Albinia's. Cleared after hearing	314	11.00	2.5
18	062706	DMD calls. Suggest SW. Search for notebooks.		2.0	
19	062806	Call WID on discovery. VC email. 053096 Report.			
20		Recd ans. of 040705; discovery		4.5	
21	062906	Theory of Defense opened.		3.5	
22		VDC calls on assignments.		0.45	
23	063006	2 rec. Order on arraignment, etc.		0.45	
24	070206	List evidence admission difficulties		3.5	
25	070306	Emails DMD & WID.		1.35	
I hereby certify to the Court that the information set forth on this time sheet accurately reflects the time and activities performed by me for the above named client.			TOTAL FOR THIS PAGE		
Signature: Sarah A. Kelly			654	51.6	2.5
Date: 11/07/06			TOTAL FOR ALL PAGES		
			2646	233.25	4.5

OFFICE OF INDIGENT DEFENSE

Stephen C. Stankso

CASE NUMBER: 05-GS-22-918

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

PLANE TYPE OR PRINT LEGAL

PAGE 5 of 8

1	070706	Schedule travel. email WID + Is + voice mail		0.55	
2		I arrange evid. view w/SFH for 10 th . VDC to attend		3.5	
3	070806	I begin examination of CP tape.		4.0	
4	071006	I reach side B of CP tape. I travel to GT meet			
5		w/Is visit GTSD + HCPD.	300	17.0	
6	071106	Finish side A of Tom Walker Tape. Producer Mary			
7		Norman for filming evaluation. Prepare		3.0	
8		for 10 th meeting. SFH reset GTSD viewings. WID			
9		noticed I will not attend evaluation. WID calls			
10		on who is Connie Price. 2 nd Norman call. I render			
11		opinion on sl at age 17+.		8.0	
12	071206	Pinaway. VDC calls.		9.5	
13	071306	Is arrive at TAM. Connie Price - sought help			
14		defense. Social worker history. I Steve Brown. emails.		9.0	
15	071406	Request SW from WID. Inform evidence view.			
16		Dr. Evelyn Coliff. I read reports - SH finds boxes.		8.5	
17	071506	VDC requests to view all items. WID calls on			
18		state evaluation today. VDC request to WID. Pam			
19		Crawford to sign agreement I email requests		2.0	
20		to SFH + reply to Is.		2.0	
21	071706	SFH direct me to I Steve Brown.		0.35	
22	071806	SFH says I am unclear. I reply + ISB calls.			
23		Returns are faxed. I examine VDC notes.			
24	072006	I travel to GTSD + view all evidence. I render			
25		opinion.			
			312	12.0	
I hereby certify to the Court that the information entered on this time sheet		TOTAL FOR THIS PAGE:	612	79.4	-0-
accurately reflects the time and activities performed by me for the above named		TOTAL FOR ALL PAGES:	3258	312.65	4.5
client.					
Signature: <u>Shakel Kelly</u>		Date: <u>11/07/06</u>			

OED FORM 600 (05/04) Last Supp. Edition is authorized.

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

PLANE TYPE OR PRINT LEGALLY

PAGE 6 of 8

1	072106	Unpack deBrief; email SFH; DMD hypothetical			
2		VDC emails + calls. CP info. JJ calls. 2 email			
3		W/D on call.		7.25	
4	072206	Emails & discovery.		3.0	
5	072306	Srt. file + discovery.		2.0	
6	072406	1 travel to GT. Prepare orders. Hearing held.			
7		I give VDC assignment outline.	316	11.75	3.0
8	072506	Wit. list, motions, email. VDC calls. Transcribe			
9		GP- JSB interview. DMD calls on ECC credentials			
10		VDC calls. Clerk Williams confirms CP call.			
11		VDC calls + complaints of SH withholding			
12		tapes until telephone records not available			
13		2 render 2 opinions.		11.0	
14	072606	Recent discovery. VDC calls. I prepare Atty Wby release			
15		2 call clerk Williams. Rec. fax letter of client			
16		2 prepare motion + email + fax.		8.0	
17	072706	Emails + call from DMD. PPP info on Connio Price			
18		2 render opinion. DMD calls.		9.0	
19	072806	Emails; JJ conference call. 2 agree to			
20		subpoena list. VDC calls.		9.0	
21	072906	2 pack case. 2 prepare jury instructions.		8.5	
22	073006	2 travel to GT + set up file.	176	14.0	
23	073106	Hearing on Insanity. Met C.P. + Gary Owens			
24		in evening.	30	13.5	4.5
25	080106	Jury Panels selected. Motion In limine denied.			
I hereby certify to the Court that the information reflected on this time sheet accurately reflects the time and activities performed by me for the above named client.			TOTAL FOR THIS PAGE: 522 97 7.5		
Signature: Gerald Kelly			TOTAL FOR ALL PAGES: 3780 409.65 12.0		
Date: 11/07/06					

CDP FORM 600 (2004) Last Edition is authorized.

The State,

vs.

Stephen C. Stumbo

CASE NUMBER: 05-GS-22-918

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

PLEASE TYPE OR PRINT LEGIBLY

PAGE 7 of 8

1		In Camera Proffer of Subpoena targets.	30	6	7
2	080206	DMDarrives. PPP moves to get hash.			
3		Discovering F. 8 Jurors selected.	30	11.5	6.5
4	080306	Jury panels. J.J. gives motion.			
5		by calling PPP attorney.	30	8.5	8.5
6	080406	Jury Panels.	30	4.5	8.0
7	080506	2nd jury selection.		6.5	
8	080606	Research + meet w/c @ GTDC;			
9		meet. w/ VDC.		9.0	
10	080706	Open. E. Pr. ER Nurse.	32	6.0	6.5
11	080806	State Rests. 2 sit w/ social worker + client.			
12		2 prepare closings.	32	7.5	7.5
13	080906	Experts Woo + Thacker.	26	7.0	7.0
14	081006	Sachy; Rebuttal. Pam Crawford. Charge			
15		Conference.	24	4.5	9.0
16	081106	Closing + charge. Guilty on all counts.	22	5.5	9.6
17	081206	Called S. Young. Legal Advice. Met w/Is			
18		3 times. Is + Connie Price. Review			
19		evidence list.		11.0	
20	081306	Travel to GTDC w/c 1.5 hr.; 1st. Small			
21		argument. Review evidence. Met w/Is;			
22		WID calls to bring back Woo.		9.5	
23	081406	Eliz. Buchner on stand. Proffer of HL T evidence.	24	5.5	8.0
24	081506	State Rests; Motion to limit C. Price evidence.			
25		2 Ball + go to hospital	20	8.0	7.0
I hereby certify to the Court that the information set forth on this time sheet accurately reflects the time and activities performed by me for the above named client.			TOTAL FOR THIS PAGE: 300 110.5 84.1		
Signature: Gerald Kelly Date: 110706			TOTAL FOR ALL PAGES: 4080 520.15 96.0		

OED FORM 400 (2/04) Local Duplication Prohibited

The State,

vs.

Stephen C. Stanbo

CASE NUMBER: 05-63-22-918

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

PLEASE TYPE OR PRINT LEGIBLY

PAGE 8 of 8

1	081606	Principal, 2 teachers, Mayo, Lonnie			
2		Price, Meacham, Sanford Graves, Dr.			
3		Woo, ~~Dr.~~ 2 meet w/Is.	24	2.5	8.0
4	081706	Dr. Woo, Dr. Sashy, Dr. Crawford, all			
5		PPP, all solicitors, MBPD.	20	4.0	9.5
6	081806	Closings. Chang. Verdict death			
7		all other convictions executive			
8		t maximum.	20	5.0	8.0
9	081906	2 ret to office after packing.	156	8.0	
10	092606	2 unpack and store file + enter			
11		~~2~~ documents received in file.		5.0	
12					
13					
14					
15					
16					
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21					
22					
23					
24					
25					

I hereby certify to the Court that the information outlined on this time sheet accurately reflects the time and effort performed by me for the above named client.

Signature: Gerald C. Kelly Date: 11/07/06

TOTAL FOR THIS PAGE:	220	24.5	25.5
TOTAL FOR ALL PAGES:	4300	544.65	121.5

OFFICIAL USE ONLY (Do Not Print or Write)

DEFENSE OF INDIGENTS VOUCHER

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NON INCARCERATED ADDRESS OF DEFENDANT, and attach you or detailed item list, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this completed package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, attach a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT 843.734.1343, FAX: 843.734.1345, e-mail: indigent@scd.uscourts.gov. BEFORE IN CURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER along with one copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11433, 1123 Lady Street, Suite 1116, Columbia, SC 29211. Please leave that supporting documentation included and that all parts of this voucher are completed. Entries must be typed or lightly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be a letter the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed but in no event later than June 30th of the year services were completed, in order to be paid.

County Georgetown	List All Case Numbers (SA, CP, JJ or Arrest Warrant Number): H-750173; H-750181; H-750185 H-929318; H-750183
Client's Full Name: Stephen Christopher Stanko	Charge(s): Murder; Grand larceny; CSC w/minor ABWIK; Kidnaping
Voucher Submitted Under Seal? ☒ YES ☐ NO	Previous Vouchers Submitted For This Client at this level (Trial or Appeal)? ☐ YES ☐ NO
☐ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Status Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ WPP ☐ Other	

Percent to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS' FEES	
NON DEATH PENALTY CASE FEES	
Hours at \$48.00 per hour for Out-of-Court services	\$
Hours at \$80.00 per hour for In-Court services (Restricted to actual hearing times)	\$
DEATH PENALTY CASE FEES	
Hours at \$80.00 per hour for Out-of-Court services	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times)	\$ 37,933.50
TOTAL FEES: \$ 37,933.50	

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$3,000 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,700 in WPP cases.

EXPENSES	
Long Distance Telephone Calls	\$
Psychiatric Examination	\$
Expert Witness(es)	\$
Investigative Services	\$
Extraordinary Travel Expenses	\$
Advanced Payment For Expenses	\$
Other Expenses (Specify)	\$

* REQUIRES PRIOR APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT - ORDER MUST STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE. Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.) \$

MAXIMUM EXPENSES allowed are \$25,000 in Death Penalty cases and \$3,000 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf. \$

TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$ 37,933.50

☐ Advance payment. Date of request for funds (Approval Order attached): 20 ☒ Final submission; no further requests for funds. Date case concluded: August 18, 2006 Method of Disposition: ☐ Plea ☐ Trial ☐ Acquittal ☐ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other		Trial Judge's Signature Clerk or Court Date Approved Clerk of Courts Signature Clerk of Court (County): Date Certified: OLD FILE NO.: AGENCY VOUCHER NO.:
Attorney's Signature: Check Applicable Category: ☐ Public Defender ☒ Private Attorney	Attorney's Signature: Check Applicable Category: ☐ Public Defender ☐ Private Attorney	
CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.I.A. NUMBER MUST BE INCLUDED.		
Name and Address of Check Payee: William Isaac Diggs 1700 Oak Street, Suite D Myrtle Beach, SC 29577		
SSN or F.I.A. Number: TELEPHONE NUMBER: 843.626.4043		

Gerald Alan Kelly
4760 Yemassee Highway
Varnville, SC 29944
803-943-0510
geraldkelly@islc.net

Georgetown Detention Center 843-545-3400

TIME RECORD

TO: **FILE**
FROM: **WID**
DATE: **Beginning August 30, 2005**

- **August 30, 2005** Received Order of Appointment from Judge Jefferson on Tuesday, August 30, 2005. Mistakenly appointed Parnelli. Called the judge's office and informed of corrections.
.25
- **September 1, 2005.** Talked to Gerald A about the case. Talked for approximately 30 minutes. He suggested two investigators he had worked with in the past. I told him it was ok with me.
.50
- **September 22, 2005.** Trip to Georgetown from Myrtle Beach. Interview with client. With Johana and Gerald. **1st trip @ 90 miles**
5.0
- **October 21, 2005.** Conference Telephone call with Judge Jefferson, solicitors and Gerald Kelly to discuss scheduling order.
.5
- **November 3, 2005.** Receipt, review and copying of discovery materials from the Solicitor's office.
2.0
- **November 4, 2005.** Trip to Georgetown to see client and to deliver copy of materials. **(3.5 hours)**. Note: client chose not to keep the materials at this time. **2nd trip**
3.5
- **November 8, 2005.** Receiving and reviewing the letter from Mr. Kelly and the attachment therewith.
0.5
12.25

- **November 10, 2005.** Trip to Coastal Carolina University meeting with Dr. Albinak to discuss case strategy and expert involvement. 2.0
- **November 14, 2005.** Responding to Mr. Kelly's letter. 0.5
- **November 14, 2005.** Trip to Georgetown to see client and deliver copies of the discovery materials, discussing the strategy of the case. 3rd trip @ 90 miles 3.5
- **November 14, 2005.** Preparing the order for evaluation and contacting Dr. Tora Brawly as an expert witness in this case. 1.0
- **November 16, 2005.** Telephone conference with Dr. Brawly, discuss the case and see the possibility to get involve as an expert witness, setting the evaluation date for January 10, 2006 .5
- **November 19, 2005.** Researching, preparing, and sending out the medical records request and inmate request. Also sending the orders to the judge for her signature. Sending the same to client and Mr. Kelly 2.5
- **November 29, 2005.** Receiving a telephone call from Mr. Stanko sister. Discussing the case and a possible meeting with her and the brother and possible the trial appearance for them as witness. 0.5
- **November 29, 2005.** Receiving a telephone call from Judge Jefferson's office in regard to the Orders submitted to her. Returning the call back leaving a message. 0.25
- **November 30, 2005.** Receiving and reviewing a letter from Mr. Kelly and a letter from Berkeley County Mental Health Center in regard to subpoena. Transmittal Letter to Clerk of Court with the signature page on the Order for Forensic Neuro-Psychiatric Examination. 0.50
- **January 6, 2006.** Phone call from client discussing the discovery material he received notifying him of the next meeting that we will have. 0.25
- **January 9, 2005.** Conference Call with the Dr. Brawley' office in regard to the evaluation on January 10, 2006. The evaluation got continued, need to get another doctor involve in this case. Another order will be needed. 0.50 = 12

- **January 10, 2006** Conference Call with Judge Jefferson, discussing the order for the Mitigation expert and investigation expert. Preparing a voucher and submitting to her for the mitigation and investigation funds that will be paid in advance. 0.5
- **January 20, 2006** Discussing the case with the mitigation specialist, records that needs to be requested. Meeting that she had with the client, information she got. 0.75
- **January 23, 2006**. Preparing the Order for Expert service of James Evans Aiken, serving to the Judge, Mr. Kelly and the client. 0.75
- **January 27, 2006**. Meeting with the mitigation expert and investigation expert discussing the case. Talking to the client on the phone and talking to the client's sister on the phone. 3
- **January 30, 2006**. preparing the package for the doctor for Stanko's evaluation on February 8, 2006. 0.5
- **January 30, 2006**. Preparing the order for the doctor expert Donna Schwartz-watts and for the evaluation on Stanko, serving the same to judge, Mr. Kelly and the client. .75
- **March 6, 2006**. Status conference with the Judge and Mr. Kelly discussing the letter that client send to the judge, following with the letter to judge and client 1
- **March 9, 2006**. Traveling to Georgetown to see client discussing the issue in this case and the letter he send to judge about Mr. Diggs 4th trip @ 90 miles 3
- **March 13, 2006**. Receiving a message from client, calling Georgetown detention back, leaving a message for client and paralegal talking to client, (client needs a motion to be relieve filed), talking with the judge and Mr. Kelly about this issue.

1

- **March 14, 2006.** Preparing and faxing the motion to be relieved in this case talking to the judge about it, going to Georgetown to file the motion talking to the judge to get the motion in the docket to be heard.

2.5

Sub total = 13.75

~~Contracting Dr. Thomas Sachs as expert witness~~

- **March 14, 2006.** Talking with Mr. Kelly about investigator's payment, talking to Mr. Adams and Mr. Kelly about the payment issue for the investigator, sending e-mails to the investigators and Mr. Kelly.

0.5

- **March 14, 2006.** Going to see Dr. Thrasher to try to retain him in this case as an expert talking to Dr. Goldshmit's office trying to retain him, but he has a conflict in this case. Talking to Dr. Albiniak getting an update on his research.

1

- **March 15, 2006.** Calling Dr. Simmons trying to get him to be our expert witness in this case. He has a conflict, can not represent the defendant.

0.5

- **March 16, 2006.** Meeting with Mr. Kelly, discussing the case strategy of the defense, hearing in the morning in the motion to be relief, and talking briefly with Judge Jefferson, being informed that media may be present at the hearing in the morning

2.5

- **March 17, 2006.** Traveling the Georgetown and back to the office after the hearing in front of judge Jefferson. 5th trip @ 90 miles

2

- **March 17, 2006.** Discussing the motion hearing with Mr. Kelly, and the argument related to it. And then the hearing in front of Judge Jefferson. Her decision on that motion

2

- **March 17, 2006.** Meeting with Dr. Thrasher. Discussing the case and the defendant. Getting his opinion as to the case, as well as

some names for expert witnesses. At this time he is not sure of his involvement in this case.

1.5

- **March 17, 2006.** Client call. A meeting is set for Thursday, March 23, 2006.

0.2

- **March 20, 2006.** Contacting Dr. Thomas Sachy an expert witness from Gray, Georgia. He will be our expert. Getting a e-mail from him, CV attached.

0.5

- **March 21, 2006.** Preparing the order for expert services, talking to the doctor about information needed from him.

1

- **March 22, 2006.** Discussing the case with doctor Sachy, reviewing published articles referenced in Dr. Sachy's prior court testimony in the Rivera case, development of strategy for the trial.

1

Sub total = 12.7

- **March 23, 2006.** Trip to Georgetown to meet with client and investigator Childs. 6th Trip @ 90 miles

3.5

- **March 27, 2006.** Meeting with Mr. Kelly, Vicki and Dale discussing the case, strategy and the doctor who will testify at the trial of the case.

4

- **March 28, 2006.** Going to Georgetown sheriff's office reviewing the boxes with materials seized from our clients apartment after the murder of Ms. Ling. (4 hours- 2 hours reviewing the documents) 7th trip @ 90 miles

4

- **March 31, 2006.** Emails to Drs. Wu, Sachy, and Einhorn, following telephone conferences with each re: services in this case, scheduling of PET scan and MRI and psyc battery of tests.

.5

- **April 5, 2006.** Telephone to doctor Einhorn, discussing the testing and calling the judge in regard to the expert order.

0.5

- **April 5, 2006.** Going to see client and discuss the testing on him and the result from viewing the document on his personal boxes seized from the sheriff's department. (3 hours) 8th trip @ 90 miles

3

- **April 6, 2006** Telephone discussions with Drs. Sachy and Einhorn, re: status of court order on expert fees and discussion of schedule for examinations. Dr. Sachy to set up PET Scan next week. [.3 hours]

.3

- **April 7, 2006** Letter to Dr. Einhorn to confirm hiring and tests to be performed. [.2 hours] Subtotal time to date: 66.7

.2

- **April 28, 2006** Review of juror questionnaire. Email letter to Gerald Kelly re: same. Discussion with Appellate Defense (Joe Savitz) re: capital cases and juror questionnaires and voir dire issues.

.2

- **May 1, 2006** Email from Dr. Sachy re: volumetric MRI. Scheduling of same. Teleconference with Dr. Sachy re: Dr. Gur. Call to Dr. Gur in PA. Teleconference with Judge Jefferson and other counsel re: status conference.

1.2

- **May 2, 2006** Email to Dr. Sachy re: Scheduling of tests at MUSC (.2 hours) 17.6 (running total 68.3)

.2

- **May 2, 2006** Survey of U.S. case law on insanity and irresistible impulse, model penal rule and S.C. Code Ann 17-24-20 (GBMI). Beginning of drafting of pre-trial motions

2.6

- **May 4, 2006** Teleconference with Dr. Sachy re: MUSC exams. E-mail letter to Sachy re: scheduling with Dr. Einhorn

.3

- **May 5, 2006** Teleconference with Dr. Einhorn re: scheduling of MUSC tests and discussion of logistics. Transmittal of requested info re: past meds in preparation of testing at MUSC and Georgetown. Drafting of letter to Judge Jefferson for the transporting of client to MUSC on May 18, 2006 at 8:00 am. .4
 - **May 8, 2006** Teleconference with Dr. Einhorn re: upcoming testing at MUSC. Travel directions and scheduling for testing at Georgetown. .2
 - **May 9, 2006** Teleconference with Dr. Einhorn re: testing and travel. .1
 - **May 9, 2006** Receipt and review of emails from Dale Davis from Laura Ling to others 1.1
 - **May 11, 2006** Trip to Georgetown County Detention Center to visit with client to discuss case, facts and strategy (3 hours) 9th trip @ 90 miles 3
 - **May 12, 2006** Multiple discussions with Dr. Einhorn, Dr. Sachy; MUSC, re: scheduling of psychological tests, pet-scan and MRI (1 hour) 1
 - **May 17, 2006** Discussions with Dr. Einhorn re: testing and travel .2
 - **May 18, 2006** Discussions with Dr. Einhorn re: testing schedules for the day .2
 - **May 18, 2006** Telephone conference with co-counsel re: case status and strategy, probable motions based on testing outcome and reports (.75 hours) page total = 9.85 .75
 - **May 18, 2006** Telephone conference with Dr. Einhorn re: status of testing at both MUSC and GDC. .1
- 9.95 (running total 78.25)**

- **May 19, 2006.** Trip to Georgetown County Detention Center to visit with the client and Dr. Einhorn re: the continuance of the tests. (2.5 hours) 10th trip @ 90 miles 2.5
- **May 23, 2006.** multiple discussion with Dr. Wu's office, MUSC, and Dr. Sachy in regard to the test result and how to get them to Dr. Wu. .2
- **May 24, 2006** Emails to and from Dale Davis re: investigation/mitigation and case status. Multiple calls to MUSC re: disc for Dr. Wu, call to Dr. Sachy re: order from his office re: disc data. .7
- **May 31, 2006** Trip to Georgetown detention Center to visit with client and discuss the testing done by dr. Einhorn. (3 hours) 11th trip @ 90 miles 3
- **June 1, 2006** Preparing and sending the amended order on Dr. Einhorn and the voucher for his service (.5 hours) .5
- **June 13, 2006** Teleconference with Dr. Wu; teleconference with Dr. Einhorn; teleconference with Gerald Kelly; receipt of letter from Solicitor's office re: insanity tests; 1.8
- **June 16, 2006** Teleconference with Dr. Wu to discuss his analysis of PET scan data; hypofrontality. Teleconference with David Keator of Brain Imaging Legal Services re: Discs 1
- **June 19, 2006** Trip to Georgetown to meet with client to discuss evidence and strategy; reviewing evidence and making copies of same at Sheriff's office (5.5 hours) 12th trip @ 90 miles 5.5
- **June 20, 2006** Receipt and review of PET scan images. Discussion of same with Dr. Sachy, and Dr. Wu. (2.2 hours) 2.2
- **June 21, 2006** Research of insanity laws and evolution of same. Drafting of pretrial motions; reviewing and making copies of documents at Horry County Police Department

8.5

- **June 22, 2006** Trip to Georgetown and meeting with client and co-counsel. Hearing before Judge Jefferson on motions and other case related matters. Meeting with client and return trip from Georgetown. (6 hours) (subtotal) 13th trip @ 90 miles

6

- **June 23, 2006** Discussions with Dr. Wu concerning the color scales associated with the imaging process and articles concerning Frye arguments made in past cases in other States (not South Carolina which follows neither the Frye nor Daubert analysis)

.4

- **June 24, 2006** Trip to Georgetown, visit with client. Meeting with Dr. Sachy to discuss case and tests still to be performed. Discussion with Dr. Sachy of procedures and opinions after tests were completed. (4.5 hours) 14th trip @ 90 miles

4.5

- **June 25, 2006** Research and review of psychological and psychiatric materials related to findings of Drs. Wu and Sachy.

3

- **June 29, 2006** Meeting with Dr. Thrasher regarding testimony at trial; update on findings, review of evidence

1

- **July 1, 2006** Meeting with Dr. Califf to discuss potential testimony in trial regarding family background; review of evidence to date

1

- **July 7, 2006** Trip to Georgetown to meet with client. Meeting with Dr. Thrasher. Meeting with Dr. Thrasher and client. Dr. Thrasher's protocol with client and attorney involvement. (5 hours) 15th trip @ 90 miles

5

- **July 8, 2006** Review of case law including Clark v. Arizona; review of neurological articles;

6

- **July 9, 2006** Receipt and review of Sachy report draft. Discussions with Dr. Sachy re testimony at trial and findings resulting from tests.

- .9

• **July 10, 2006** Letter to Dr. Einhorn re: payment for services and anticipated trial testimony and scheduling.
- .6

• **July 10, 2006** Discussions with Dr. Sachy. Receipt and review of final report from Dr. Sachy. Email to Dr. Wu to discuss itinerary and scheduling.
- 1.2

• **July 11, 2006** Preparation of witness list and exhibit list. (1 hour)
56.5 (running total: 134.75 hours)
- 1

• **July 14, 2006** Trip to Georgetown to visit client and Court appointed doctor (Crawford) (5 hours) 16th trip @ 90 miles
- 5

• **July 15, 2006** Trip to Georgetown to visit client and Court appointed doctor (Crawford) (4 hours) 17th trip @ 90 miles
- 4

• **July 16, 2006** Discussions with Dr. Crawford and Fran Humphries re: trip to Columbia tentatively scheduled for Monday July 17, 2006 (.2 hours)
- .2

• **July 18, 2006** Discussions with Dr. Sachy re: Dr. Crawford's efforts to change his opinion. Review of case law applicable to insanity and diminished capacity (1.1 hours)
- 1.1

10.3 (running total 145.05)
- **July 19, 2006** Review of case law in preparation for trial and presentation of insanity defense. (2.0 hours)
- 2

• **July 20, 2006** Review of case law and evidence in preparation of trial and motions arguments (2.4 hours)
- 2.4

- **July 21, 2006** Preparation for trial; review of evidence and case law. Discussions with Dr. Sachy re: updated report. Receipt and review of Dr. Gur's report. (2.5 hours) 2.5
- **July 22, 2006** Receipt and review of updated report from Dr. Sachy. Trial preparation (1 hour). 1
- **July 24, 2006** Review of juror questionnaires, motion hearing before judge Jefferson (5.5 hours) 5.5
- **July 25, 2006** Discussion with Dr. Sachy re: state motion in limine (.5 hour) .5
- **July 25, 2006** File review and case research on insanity. Discussion with Dr. Sachy and Dr. Thrasher re: defense testimony. (2.1 hours) Formulating memo in opposition 2.1
- **July 26, 2006** Meeting with Vicki Childs; receipt and review of letter from client; e-mail to Dale Davis re: Calif; receipt of motion from co-counsel re: Conway charges; discussion with Dr. Sachy re testimony required on Monday, July 31, 2006. (3 hours) 3
- **July 28, 2006** Trip to Georgetown to visit client and Dr. Thrasher. (5 hours) 24 hours sub (169.05 running total) 18th trip @ 90 miles 5
- **July 29, 2006** Discussions with Dr. Sachy regarding trip schedule and testimony. Receipt and review of report from Dr. Crawford. Discussions with Dr. Sachy regarding same. 2
- **July 30, 2006** Meeting with Dr. Sachy and Dr. Thrasher. Various conversations with Dr. Sachy enroute (2.3 hours) 2.3
- **July 31, 2006** Motions argument and court matters. 8

- **August 1, 2006** Trip to Georgetown County, jury qualification process. Compiling juror information with panel's and preparing for following day (13 hours) 19th trip @ 90 miles 13
- **August 2, 2006** Trip to Georgetown County, jury qualification process. Compiling juror information with panel's and preparing for following day (13 hours) 20th trip @ 90 miles 13
- **August 3, 2006** Trip to Georgetown County, jury qualification process. Compiling juror information with panel's and preparing for following day (13 hours) 21st trip @ 90 miles 13
- **August 4, 2006** Trip to Georgetown County for jury qualification process. (13 hours) 64.3 hours sub (running total 233.35) 22nd trip @ 90 miles 13
- **August 5, 2006** Telephone call from Fran Humpries re: subpoena (.1); Telephone call back to Peggy at Solicitor's office (.1); call to Gerald Kelly (.1); meeting with Bernard Albinak (1); work on examination of experts (.7) = 2 hours 2
- **August 6, 2006** Trip to Georgetown to meet with client before trial. (3 hours) 23rd trip @ 90 miles 3
- **August 7, 2006** First day of trial. Trip to Georgetown. Presentation of state's case in chief. (11 hours). 24th trip @ 90 miles 11
- **August 8, 2006.** Second day of trial. Trip to Georgetown. State's case in chief, state rests. Beginning of defense. Dr. Albinak. (10 hours) 25th trip @ 90 miles 10
- **August 9, 2006.** Third day of trial, first full day of defense. Dr. Thrasher, Dr. Einhorn, Dr. Wu. (9 hours). 26th trip @ 90 miles 9

- **August 10, 2006.** Fourth day of trial Dr. Sachy's testimony. Presentation of state's rebuttal witnesses: Crawford, Brannon, Brawley, Spicer. (10 hours) 27th trip @ 90 miles

10

- **August 11, 2006** Trip to Georgetown. Closing arguments through jury verdict. 12 hours 57 new hours. (290.35 total hours) 28th trip (@ 90 miles per trip)

12

28 x 90 = 2,520 miles subtotal

- **August 13, 2006** Discussions with Dr. Wu, and Dr. Thrasher re: testimony in penalty phase. Trip to Georgetown to visit client and discuss penalty phase (3.4 hours) 29th trip (@ 90 miles per trip)

3.4

- **August 14, 2006** Trip to Georgetown, Monday, first day of penalty phase. (11.6 hours) 30th trip (@ 90 miles per trip)

11.6

- **August 15, 2006** Trip to Georgetown, Tuesday, second day of penalty phase. (11.6 hours) 31st trip (@ 90 miles per trip)

11.6

- **August 16, 2006** Trip to Georgetown, Wednesday, third day of penalty phase of trial. (11.5 hours) 32nd trip @ 90 miles per trip)

11.5

- **August 17, 2006** Trip to Georgetown, Thursday, fourth day of penalty phase of trial. (12 hours) 33rd trip @ 90 miles per trip)

12

- **August 18, 2006** Trip to Georgetown, Friday, fifth day of penalty phase of trial. 9 hours) 34th trip @ 90 miles per trip)

9

- **August 19, 2006** Preparation of Notice of Intent to Appeal and service on counsel of record. Filing of same with the State Supreme Court

.6

- **August 26, 2006** Travel to Leiber Correctional Institution to meet with client about appeal

7

Total hours = 345.45

Total mileage= 3060

DEFENSE OF INDIGENTS VOUCHER

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NON-INCARCERATED ADDRESS OF DEFENDANT, and attach your detailed itemized Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, attach a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT 803.734.1343, FAX 803.734.1345, e-mail: oidd@scjudicial.net. BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER along with one copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11431, 1122 Lady Street, Suite 1114, Columbia, SC 29211. Please know that supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in person from not later than THIRTY (30) DAYS after services were completed, but in no event later than June 30th of the year services were completed, in order to be paid.

County Georgetown	List All Case Numbers (CR, CP, AJ or Arrest Warrant Number) H-750173; H-750181; H-750185 H-929318; H-750183
Client's Full Name Stephen Christopher Stanko	Charge(s) Murder: Grand larceny: CSC w/minor ABWIK: Kidnaping
Voucher Submitted Under Bond? ☒ YES ☐ NO	Previous Vouchers Submitted For This Client at this level (Trial or Appeal)? (Prior judgments are considered new cases) ☒ YES ☐ NO
Type of Case (Mark Appropriate) ☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ John Oliver ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ PP ☐ Other	

Percent to be paid current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS FEES

NON DEATH PENALTY CASE FEES	
Hours at \$40.00 per hour for Out-of-Court services	\$
Hours at \$80.00 per hour for In-Court services (Restricted to actual hearing times)	\$
DEATH PENALTY CASE FEES	
Hours at \$80.00 per hour for Out-of-Court services	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times)	\$
TOTAL FEES: \$	

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$2,500 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,750 in JUV cases.

EXPENSES

Long Distance Telephone Calls	\$
Psychiatric Examination	\$
Expert Witness(es) DR JAMES W. THRASHER, JR. M.D.	\$ 9,387.50
Investigative Services	\$
Extraordinary Travel Expenses	\$
Advanced Payment For Expenses	\$
Other Expenses (Specify)	\$

*REQUIRES PRE-APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT - ORDER MUST STATE MAXIMUM FEE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSE MUST BE APPROVED PRIOR TO BEING INCURRED OR ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE. Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.) \$

MAXIMUM EXPENSES allowed are \$25,000 in Death Penalty cases and \$2,500 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf. \$

TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$ 9,387.50

☐ Advance payment. Date of request for funds (Approval Order attached): August 18, 2006 ☒ Final submission; no further requests for funds. Date case concluded: August 18, 2006 Method of Disposition: ☐ Plea ☐ Trial ☐ Acquittal ☐ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other		Trial Judge's Signature Clerk or Clerk Date Approved Clerk of Courts Signature
This is a true and correct statement of my service to and expenses for the above named Defendant. Attorney's Signature: <i>[Signature]</i> Attorney's Signature:		CASE or CASEFILE NUMBER: Date Certified: OLD FILE NO.: AGENCY VOUCHER NO.:
Check Applicable Category: ☐ Public Defender ☒ Private Attorney		
CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR P.I.L. NUMBER MUST BE INCLUDED. Name and Address of Check Payee: William Isaac Diggins 1700 Oak Street, Suite D Myrtle Beach, SC 29577		
SSN or P.I.L. Number: TELEPHONE NUMBER: 843.626.4043		

JAMES WINFIELD THRASHER JR M.D.

1113 48TH AVENUE NORTH
SUTTE 117
MYRTLE BEACH, SC 29577-5441

Invoice

Date	Invoice #
8/24/2006	1

Bill To
WILLIAM I DIGGS 1700 OAK ST STE D MYRTLE BEACH SC 29577

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
4	INITIAL EVALUATION STANKO July 7, 2006	250.00	1,000.00
2	2 HOURS TRAVEL TIME July 7, 2006	150.00	300.00
4	REVIEW PRIOR RECORDS July 8, 2006	150.00	600.00
6	REVIEW OF RECORDS July 14, 2006	150.00	900.00
2.5	FOLLOW-UP INTERVIEW W/ STANKO July 28, 2006	250.00	625.00
2	REVIEW OF CASE W/ MR DIGGS July 28, 2006	150.00	300.00
2	2 HOURS TRAVEL TIME July 28, 2006	150.00	300.00
9	INCLUDES FINAL RECORD REVIEW, REPORT WRITING, PROOFREADING & CORRECTIONS & FINAL PROOFREADING 7/30/06	150.00	1,350.00
1	TRANSCRIPTIONIST - FLAT FEE FOR WEEKEND WORK July 30, 2006	300.00	300.00
2	CALLED TO COURT THEN CANCELLED, GUILT PHASE August 8, 2006	150.00	300.00
2	FOR COURT APPEARANCE, GUILT PHASE August 9, 2006	150.00	300.00
4	TESTIMONY AND WAIT TIMES, GUILT PHASE August 9, 2006	150.00	600.00
6.5	WAIT AT COURT HOUSE TO BE CALLED PENALTY PHASE August 16, 2006	150.00	975.00
2	WAIT AT COURT HOUSE TO BE CALLED PENALTY PHASE August 16, 2006	150.00	300.00
2	TRAVEL TIME - PENALTY PHASE August 17, 2006	150.00	300.00
2	WAIT TIME AND APPEARANCE TIME, PENALTY PHASE August 17, 2006	150.00	300.00
2	MEETING W/ DR SACHY - REVIEW OF EVIDENCE July 30, 2006	150.00	300.00
1	TRAVEL TIME FOR MEETING W/DR SACHY July 30, 2006	150.00	150.00
1	MEETING W/MR DIGGS - THRASHER OFFICE June 29, 2006	150.00	150.00
0.25	TELEPHONE CONFERENCE W/MR. DIGGS June 14, 2006	150.00	37.50
SC V STEPHEN C STANKO		Total	\$9,387.50

DEFENSE OF INDIGENTS VOUCHER

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NONINCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE COMMISSION ON INDIGENT DEFENSE AT 803.734.1343, FAX: 803.734.1345, e-mail: executive@scid.sc.gov, BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER: South Carolina Commission on Indigent Defense mailing address, P.O. Box 11433, Columbia, SC 29211. For overnight deliveries, send to street address: 1330 Lady Street, Suite 401, Columbia, SC 29201. Please insure that all supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed, but in no event later than June 30th of the year services were completed, in order to be paid.

County Horry		List All Case Numbers (GS, CP, JU or Arrest Warrant Numbers): 2005-GS-26-2927
Client's Full Name: Stephen Christopher Stanko		List All Charges With CDR Code: Murder, Armed Robbery
Last Known Address (Prior to Incarceration): [REDACTED]		
Voucher Submitted Under Seal? ☒ YES ☐ NO	Previous Vouchers Submitted For This Client at this level (Trial or Appeal)? (Mistrial/Retrial are considered new cases) ☐ YES ☒ NO	Type of Cases (Most Serious Charge): ☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Status Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ SVP ☐ Other

Pursuant to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS' FEES

NON DEATH PENALTY CASE FEES

Hours at \$40.00 per hour for Out-of-Court services.....	\$
Hours at \$60.00 per hour for In-Court services (Restricted to actual hearing times)	\$

DEATH PENALTY CASE FEES

Hours at \$50.00 per hour for Out-of-Court services.....	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times)	\$

TOTAL FEES: \$

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$3,500 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,750 in SVP cases.

EXPENSES

Long Distance Telephone Calls	\$
Psychiatric Examination *	\$
Expert Witness(es) * Dr. James Thrasher	\$ 2,625.00
Investigative Services *	\$
Extraordinary Travel Expenses *	\$
Advanced Payment For Expenses *	\$
Other Expenses (Explain) *	\$

* REQUIRES PRE APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT — ORDER MUST STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE! Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.)..... \$

MAXIMUM EXPENSES allowed are \$20,000 in Death Penalty cases and \$500 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf. \$

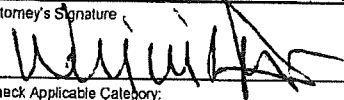
TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$ 2,625.00

☐ Advance payment. Date of request for funds (Approval Order attached): _____, 20__

☒ Final submission; no further requests for funds. Date case concluded: **November 19**, 20 **09**

Method of Disposition: ☐ Plea ☐ Trial ☐ Acquittal ☐ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other

This is a true and correct statement of my service to and expenses for the above named Defendant.

Attorney's Signature


Attorney's Signature

Check Applicable Category:
☐ Public Defender ☒ Private Attorney

Check Applicable Category:
☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.E.I. NUMBER MUST BE INCLUDED.

Name and Address of Check Payee:
(Also, Please Provide a valid Email Address)

William Isaac Diggs, 1700 Oak Street, Suite D, Myrtle Beach, SC 29577

SS or F.E.I. Number: [REDACTED]

TELEPHONE NUMBER: **843.626.4243**

APPROVED BY:

Trial Judge's Signature

Clerk of Court

Date Approved: **11/17/10**

CERTIFIED BY:

Clerk of Court's Signature

Clerk of Court For (County): **Horry**

Date Certified:

OID FILE NO.:

AGENCY VOUCHER NO.: **3483**
4010

J. W. Thrasher, Jr. M.D.
Waccamaw Center for Mental Health
164 Waccamaw medical park drive.
Conway, South Carolina 29526
843-347-4888

December 20, 2009

William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

Re: Stephen Stanko

Dear Bill:

I am submitting my bill for professional and expert testimony in the Stephen C. Stanko capital murder case.

November 7, 2009	Meeting at the defense attorney's office discuss the testimony	1.5 hours
November 14, 2009	testimony first phase of trial and waiting and travel time	5 hours
November 18, 2009	travel time and waiting time	3 hours
November 19, 2009	testimony of second phase of trial waiting time and travel time	3 hours
Reviewing the documents and the testimony from the first trial and research in this case		5 hours

Total hours 17.5 hours x \$ 150.00= \$ 2,625.00 ✓

I was a pleasure working with you in this matter.

Sincerely yours

s/James Thrasher

James Thrasher

DEFENSE OF INDIGENTS VOUCHER

5-38

NOTICE: Please complete this voucher including FULL NAME and LAST KNOWN NON-INCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT 803.734.1343. FAX: 803.734.1343, e-mail: evencove@scjudicial.com. BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER along with our copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11433, 1122 Lady Street, Suite 1110, Columbia, SC 29211. Please insure that all supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed, but in no event later than June 30th of the year services were completed, in order to be paid.

County Georgetown	List All Case Numbers (ES, CP, JU or Arrest Warrant Numbers): H-750173 ; H-750181 ; H-750185 400^D H-929318 ; H-750183
Client's Full Name Stephen Christopher Stanko	Case Category: Murder, Grand Larceny, CSC w/murder ABWIK, kidnapping
Client Known Address (If Not in Incarceration) [REDACTED]	
Voucher Submitted Under Seal? ☒ YES ☐ NO	Previous Vouchers Submitted For This Client At This Level (Trial or Appeal)? (If any vouchers are considered new cases) ☒ YES ☐ NO
Type of Case (Most Applicable Charge): ☐ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Status Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ EYP ☐ Other	

PURSUANT to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS' FEES

NON DEATH PENALTY CASE FEES

Hours at \$40.00 per hour for Out-of-Court services	\$
Hours at \$60.00 per hour for In-Court services (Restricted to actual hearing times)	\$

DEATH PENALTY CASE FEES

Hours at \$80.00 per hour for Out-of-Court services	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times)	\$

TOTAL FEES: \$

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$2,500 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,750 in EYP cases.

EXPENSES

Long Distance Telephone Calls	\$
Psychiatric Examination	\$
Expert Witness (es) DR. THOMAS H. SACHY, M.D., M.S., F.D.	\$ 16,957.50
Investigative Services	\$
Extraordinary Travel Expenses	\$
Advanced Payment For Expenses	\$
Other Expenses (Furnish)	\$

*REQUIRES PRE-APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT. ORDER MUST STATE THE MAXIMUM ALLOWABLE EXPENSES (WITHOUT SUBSEQUENT ORDER, EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE. Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.) \$

MAXIMUM EXPENSES allowed are \$25,000 in Death Penalty cases and \$2,500 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf. \$

TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$ **16,957.50**

- ☐ Advance payment. Date of request for funds (Approval Order attached): _____, 20__
- ☐ Final submission; no further requests for funds. Date case concluded: _____, 20__
- Method of Disposition: ☐ Plea ☐ Trial ☐ Acquittal ☐ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other

This is a true and correct statement of my service to and expenses for the above named Defendant.

Attorney's Signature

Attorney's Signature

Check Applicable Category:
☐ Public Defender ☐ Private Attorney

Check Applicable Category:
☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.I.L. NUMBER MUST BE INCLUDED.

Name and Address of Check Payee:

**WILLIAM ISAAC DIGGS
1700 OAK STREET, SUITE D
MYRTLE BEACH, SC 29577**

SSN or F.I.L. Number:

TELEPHONE NUMBER: **803.626.4243**

APPROVED BY

Trial Judge's Signature

A.L. Jessi

Court or Clerk

9th Circuit

Date Approved

5/15/07

Clerk of Courts Signature

Clerk of Court or (Judge)

Date Certified

OID FILE NO:

5-38

AGENCY VOUCHER NO:

115684

5810-1701



THOMAS H. SACHY, M.D., M.Sc.
Georgia Pain and Behavioral Medicine
P. O. Box 1726, Gray, Georgia 31032
Phone number 478-986-0484
Fax number 478-986-0486
Email - gapbm@hotmail.com
www.gabehavioral.com

STANKO TIME RECORD

Initial Case File Review/Research :
Initial Consultations - Phone, Email:
 Dr. Wu:
 Dr. Gur:
Initial Evaluation - Travel Time:
Initial Evaluation - discussion with Bill Diggs
Initial Interview :
 Additional Record Review:
Report Preparation - Record Review:
Pre-Trial Hearing: 7/31
 Travel Time:
 Courtroom /Preparation Time:
Trial: 8/10
 Travel Time:
 Courtroom /Preparation Time:
Sentencing Phase: 8/17
 Travel Time:
 Courtroom /Preparation Time:

Tot = ~~209~~

21 82 hours
3 spent on
2 pre-trial
15 preparation
1 after
3 court
4 review of
10 itemization

15 9.6
15 1.75

15 9.6
40 3.5

20 6
40 .6
+
113.05

113.05 * 150.00 =
16,957.50

015684

Supplementary hours not tallied with the above:

- March 20, 2006. Contact from Bill Diggs re expert witness and preparation of CV and email. 2 .5
- March 22, 2006. Discussing the case with Bill Diggs, cursory review Reinaldo Rivera case, trial strategy, discussion with Marc Einhorn. 1
- March 23, 2006. Emails to Drs. Wu, and Einhorn, telephone conferences with each. 3
- March 25, 2006. Preliminary review materials Dr. Adrian Raine. 10
- March 26, 2006 Preparation for trial; Discussions with Marc Einhorn re: findings 5
- March 31, 2006. Emails to Drs. Wu, and Einhorn, telephone conferences with each. 0
- April 5, 2006. Telephone to doctor Einhorn, discussing testing protocol. 0
- April 6, 2006 Telephone discussions with Bill Diggs and Dr. Einhorn, re: fees and discussion of schedule for examinations. .3
- May 1, 2006 Email to Bill Diggs re: volumetric MRI. Scheduling of same. Teleconference with Bill Diggs re: Dr. Gur. 1.2
- May 2, 2006 Email from Bill Diggs re: Scheduling of tests at MUSC .2
- May 4, 2006 Teleconference with Bill Diggs re: MUSC exams. E-mail letter to Dr. Einhorn .5

tot = 37

- **May 5, 2006** Teleconference with Dr. Einhorn re: scheduling of MUSC tests 1 0
- **May 8, 2006** Teleconference with Dr. Einhorn re: upcoming testing at MUSC. Travel directions and scheduling for testing at Georgetown. 1 0
- **May 9, 2006** Teleconference with Dr. Einhorn re: testing and travel. 1 0
- **May 12, 2006** Discussions with Dr. Einhorn, re: scheduling of psychological tests, pet scan and MRI 1
- **May 17, 2006** Discussions with Dr. Einhorn re: testing and travel .5 0
- **May 18, 2006** Discussions with Dr. Einhorn re: testing schedules for the day .5 0
- **May 18, 2006** Discussions with Dr. Einhorn re: status of testing at both MUSC and GDC. 1
- **May 19, 2006.** Discussion with Dr. Einhorn re: testing 2
- **May 23, 2006.** discussion with Bill Diggs regarding test results .5 .1
- **May 24, 2006** call to Bill Diggs re: order from his office re: disc data. .1
- **June 13, 2006** Discussion with Dr. Wu and Dr. Einhorn; 1.8
- **June 16, 2006** Discussion with Dr. Wu to discuss PET scan data; hypofrontality. .5 0
- **June 20, 2006** review of PET scan images. Discussion of same with Bill Diggs 2.2

tot = 16

- **June 24, 2006** review of frontal lobe damage literature 12
- **June 25, 2006** Discussions with Dr. Einhorn re neuropsychological testing, review of frontal lobe syndromes 12.
- **June 30, 2006** discussions with Dr. Thrasher regarding case, review of evidence 1
- **July 9, 2006** Discussions with Bill Diggs re testimony at trial and findings resulting from tests. 1.9
- **July 10, 2006** Discussions with Bill Diggs. Review of final report 1.2
- **July 18, 2006** Discussions with Dr. Crawford. Discussion with Bill Diggs re this unseemly behavior of Dr. Crawford. 2
- **July 21, 2006** Preparation for trial; Discussions with Bill Diggs re: updated report. review of Dr. Gur's report. 2.5
- **July 22, 2006** Preparation for trial; review of research materials on psychopathy 12
- **July 25, 2006** Discussion with Bill Diggs 1.5
- **July 25, 2006** Discussion with Bill Diggs and Dr. Thrasher re: defense testimony. 1
- **July 26, 2006** discussion with Bill Diggs re testimony required on Monday, July 31, 2006. 3
- **July 29, 2006** Discussions with Bill Diggs regarding trip schedule and testimony. 1
- **July 30, 2006** Discussion/Meeting with Bill Diggs and Dr. Thrasher. 2.3

Tot = 65

Grand Total hours = ~~37~~ 82

DEFENSE OF INDIGENTS VOUCHER

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NONINCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE COMMISSION ON INDIGENT DEFENSE AT 803.734.1343, FAX: 803.734.1345, e-mail: executive@scid.sc.gov, BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER: South Carolina Commission on Indigent Defense mailing address, P.O. Box 11433, Columbia, SC 29211. For overnight deliveries, send to street address: 1330 Lady Street, Suite 401, Columbia, SC 29201. Please insure that all supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed, but in no event later than June 30th of the year services were completed, in order to be paid.

County Horry	List All Case Numbers (GS, CP, JU or Arrest Warrant Numbers): 2005-GS-26-2927
Client's Full Name: Stephen Christopher Stanko	List All Charges With CDR Code: Murder, Armed Robbery
Last Known Address (Prior to Incarceration): [REDACTED]	Type of Cases (Most Serious Charge): ☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Status Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ SVP ☐ Other
Voucher Submitted Under Seal? ☒ YES ☐ NO	Previous Vouchers Submitted For This Client at this level (Trial or Appeal)? (Mistrial/Retrial are considered new cases) ☐ YES ☒ NO

Pursuant to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS' FEES

NON DEATH PENALTY CASE FEES

Hours at \$40.00 per hour for Out-of-Court services.....	\$
Hours at \$60.00 per hour for In-Court services (Restricted to actual hearing times)	\$

DEATH PENALTY CASE FEES

Hours at \$50.00 per hour for Out-of-Court services.....	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times)	\$

TOTAL FEES: \$

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$3,500 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,750 in SVP cases.

EXPENSES

Long Distance Telephone Calls	\$
Psychiatric Examination *	\$
Expert Witness(es) * Thomas Sack	\$ 40,143.11
Investigative Services *	\$
Extraordinary Travel Expenses *	\$
Advanced Payment For Expenses *	\$
Other Expenses (Explain) *	\$

* REQUIRES PRE APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT — ORDER MUST STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE! Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.)..... \$

MAXIMUM EXPENSES allowed are \$20,000 in Death Penalty cases and \$500 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf. \$

TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$ **40,143.11**

☐ Advance payment. Date of request for funds (Approval Order attached): _____, 20 ____

☒ Final submission; no further requests for funds. Date case concluded: **November 19**, 20 **09**

Method of Disposition: ☐ Plea ☒ Trial: ☐ Acquittal ☒ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other

This is a true and correct statement of my service to and expenses for the above named Defendant.

Attorney's Signature
[Signature]

Attorney's Signature

Check Applicable Category:
☐ Public Defender ☒ Private Attorney

Check Applicable Category:
☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.E.I. NUMBER MUST BE INCLUDED.

Name and Address of Check Payee:

(Also, Please Provide a valid Email Address)

William Isaac Diggs 1700 Oak Street, Suite D, Myrtle Beach, SC 29577

SS or F.E.I. Number: [REDACTED]

TELEPHONE NUMBER: **843.626.4243**

APPROVED BY:

Trial Judge's Signature

Court or Circuit

Date Approved

CERTIFIED BY:

Clerk of Court's Signature

Clerk of Court For (County):

Horry

Date Certified:

OID FILE NO.:

AGENCY VOUCHER NO.:

3490

4017



THOMAS H. SACHY, M.D., M.Sc.
Georgia Pain and Behavioral Medicine
P. O. Box 1726, Gray, Georgia 31032
Phone number 478-986-0484
Fax number 478-986-0486
Email – gapbm@hotmail.com

November 19, 2009

Mr. William Isaac Diggs
Attorney at Law
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
P: 843-626-4243
F: 843-626-5123

Re: Mr. Stephen Stanko
DOB: [REDACTED]
Final Invoice for Forensic Services Provided

Meeting with Attorney Bill Diggs
Sunday October 25, 2009
At 247 Lana Drive Gray, GA
10 Hours @ \$400 per Hour

\$ 4,000.00

Case File Review/Research
October 26 thru November 12, 2009
Case File Review & Research: 28 Hours
Report Preparation: 3 Hours
Review Crime Scene Report: 2 Hours
Review and Analysis Dr. Sachy's 1st Testimony: 4 Hours
Review and Analysis Dr. Sachy's 2nd Testimony: 3 Hours
Review and Analysis Dr. Sachy's Mitigation Testimony: 3 Hours
Review and Analysis Dr. Spicer's Testimony: 3 Hours
Total 46 Hours @ \$400 per Hour

\$ 18,400.00

Consultations via Phone and Email
With Dr. Wu and Dr. Gur
1 Hour Total @ \$400 per Hour

\$ 400.00

Travel Time November 14 thru 16, 2009
14 Hours @ \$400 per Hour

\$ 5,600.00

Courtroom Testimony Preparation
November 13 and 14, 2009
12 Hours Total @ \$400 per Hour

\$ 4,800.00

Courtroom Testimony November 14 and 15, 2009
Minimum 8 Hours per Day @ \$400 per Hour

\$ 6,400.00

Auto Rental, Fuel, Meals, Incidentals

\$ 543.11 No Rec

Total Amount Due

\$ 40,143.11

My Tax ID is [REDACTED] Please remit payment to the address above. Payment terms are net 30 days after receipt of invoice.

Sincerely,

Thomas H. Sachy

Thomas H. Sachy, M.D., M.Sc.

3491
4018

DEFENSE OF INDIGENTS VOUCHER

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NON INCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT 803.734.1343, FAX: 803.734.1345, e-mail: conradvo@south.state.sc.us. BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER along with one copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11433, 1123 Lady Street, Suite 1116, Columbia, SC 29211. Please insure that supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed, but in no event later than June 30th of the year services were completed, in order to be paid.

County: <u>Georgetown</u>	List All Case Numbers (DR, CP, JU or Arrest Warrant Numbers): <u>H-750173; H-750181; H-750185</u> <u>H-929318; H-750183</u>
Client's Full Name: <u>Stephen Christopher Stanko</u>	Charge(s): <u>Murder; Grand larceny; CSC w/minor</u> <u>ABWIK; kidnaping</u>
Voucher Submitted Under Seal? ☒ YES ☐ NO	Type of Case (Mark boxes as appropriate): ☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Status Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ SVP ☐ Other

Pursuant to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS' FEES

NON DEATH PENALTY CASE FEES	
Hours at \$40.00 per hour for Out-of-Court services	\$
Hours at \$80.00 per hour for In-Court services (Restricted to actual hearing time)	\$
DEATH PENALTY CASE FEES	
Hours at \$50.00 per hour for Out-of-Court services	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing time)	\$
TOTAL FEES: \$	

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$3,000 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,700 in SVP cases.

EXPENSES

Long Distance Telephone Calls	\$
Psychiatric Examination * <u>DR. MARK EINHORN</u>	\$
Expert Witness(es) *	\$ <u>5,300.00</u>
Investigative Services *	\$
Extraordinary Travel Expenses *	\$
Advanced Payment For Expenses *	\$
Other Expenses (Explain): *	\$

* REQUIRES PRE-APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT — ORDER MUST STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCLUDED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE. Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.)	\$
MAXIMUM EXPENSES allowed are \$25,000 in Death Penalty cases and \$3000 in all other cases.	
Less amount paid by Defendant or by any person on Defendant's behalf.	\$
TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER:	\$ 5,300.00

☐ Advance payment. Date of request for funds (Approval Order attached): <u>20</u> ☒ Final submission; no further requests for funds. Date case concluded: <u>August 18, 2006</u> Method of Disposition: ☐ Plea ☐ Trial ☐ Acquittal ☐ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other		Trial Judge's Signature: _____ Court or Clerk: _____ Date Approved: _____ Clerk of Court's Signature: _____ Clerk of Court (by check): _____ Date Certified: _____
This is a true and correct statement of my service to and expenses for the above named Defendant. Attorney's Signature: <u>[Signature]</u> Attorney's Signature: _____ Check Applicable Category: ☒ Public Defender ☐ Private Attorney		Check Applicable Category: ☐ Public Defender ☐ Private Attorney
CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.I.L. NUMBER MUST BE INCLUDED. Name and Address of Check Payee: <u>William Isaac Dipeolu</u> <u>1700 Oak Street, Suite D</u> <u>Myrtle Beach, SC 29577</u>		OLD FILE NO.: _____ AGENCY VOUCHER NO.: _____
SSN or F.I.L. Number: _____ Telephone Number: <u>803.626.4043</u>		

MARC EINHORN, PSY.D.
CLINICAL & NEUROPSYCHOLOGY

365 MARKET PLACE, SUITE 400
ROSWELL, GA 30075

1561 JANMAR ROAD, SUITE E
SNELLVILLE, GA 30078

VOICE 678.395.9066
FAX 678.398.9066

LICENSED
GA, AL, MT, WY

August 22, 2006

William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

Invoice: State of South Carolina v. Stephen Christopher Stanko
Warrants: H-750173, H-750181, H-750183, H-750186, H-929318

\$ 5,300.00 5/20 - 8/10/06 26.5 hrs

Multiple consultations with defense counsel, multiple consultations with defense psychiatrist, provided test results to prosecution's neuropsychological expert per prosecution's request, preparation of expert testimony, two (2) days travel to and from Georgetown, SC from Roswell (Atlanta), GA, one (1) full day in court including waiting time and testimony.

Tax I.D.# [REDACTED]

MARC EINHORN, PSY.D.
PSYCHOLOGY & PERFORMANCE SPECIALISTS, LLC

11755 POINTE PLACE, SUITE A-1
ROSWELL, GA 30076

VOICE 404.401.0556
FAX 706.344.1234

NEUROPSYCHOLOGY
FORENSIC PSYCHOLOGY
EMDR

LICENSED
GA, AL, MT, WY

December 1, 2009

William Isaac Diggs
1700 Oak Street, Suite D.
Myrtle Beach, SC 29577

Invoice: Order for Expert Services
Stephen Christopher Stanko Case
Indictment 2005 GC 26 2927

\$ 262.50 11/3/09 0.75 hrs @ \$350/hr consultation and preparation with defense
counsel

\$ 1925.00 11/6/09 5.5 hrs @ \$350/hr case review including review of transcripts,
review of neuropsychological testing, review of Continuous Performance Test
protocol and details of administration at the medical center.

\$ 700.00 11/7/09 2.0 hrs @ \$350/hr case review/consultation with Dr. Sachy

\$ 612.50 11/8/09 1.75 hrs @ \$350/hr updated research & review of cortical and
subcortical imaging, brain mapping and function

\$ 1600.00 11/14/09 8.0 hrs @ \$200/hr car travel from Roswell (Atlanta), GA to
Conway, SC

\$ 5000.00 11/15/09 per diem rate for expert testimony including waiting time

\$ 1600.00 11/16/09 8.0 hrs @ \$200/hr car travel from Conway, SC to Roswell (Atlanta),
GA

\$ ^{12.28}~~20.24~~ Food 11/14 - 11/16/09 receipts attached

\$ 11,720.24 Total fees and expenses

\$ 10,000.00 Total allowable charges per court order

DEFENSE OF INDIGENTS VOUCHER

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NON-INCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT 803.734.1343, FAX: 803.734.1343, e-mail: indigentvo@scd.uscourts.gov. BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER along with one copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11433, 1122 Lady Street, Suite 1116, Columbia, SC 29211. Please insure that supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be a letter the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed but in no event later than June 30th of the year services were completed, in order to be paid.

County Georgetown	List All Case Numbers (SM, CP, JU or Arrest Warrant Number): H-750173; H-750181; H-750185 H-929318; H-750183
Client's Full Name: Stephen Christopher Stanko	List All Charges: Murder: Grand Larceny: CSC w/minor ABWIK: kidnapping
Voucher Submitted Under Seal? ☒ YES ☐ NO	Type of Cases (Mark Applicable Check): ☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Other Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ PP ☐ Other

Pursuant to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS FEES

NON DEATH PENALTY CASE FEES

Hours at \$40.00 per hour for Out-of-Court services	\$
Hours at \$80.00 per hour for In-Court services (Restricted to actual hearing times)	\$

DEATH PENALTY CASE FEES

Hours at \$60.00 per hour for Out-of-Court services	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times)	\$

TOTAL FEES: \$

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$3,500 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,700 in SVP cases.

EXPENSES

Long Distance Telephone Calls	\$
Psychiatric Examination	\$
Expert Witness(es)	\$ 3,610.26
Investigative Services	\$
Extraordinary Travel Expenses	\$
Advanced Payment For Expenses	\$
Other Expenses (Explain):	\$

* REQUIRES PRE-APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT - ORDER MUST STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE. Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.) \$

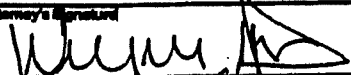
MAXIMUM EXPENSES allowed are \$25,000 in Death Penalty cases and \$2000 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf. \$

TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$ 3,610.26

- ☐ Advance payment. Date of request for funds (Approval Order attached): _____, 20____
☐ Final submission; no further requests for funds. Date case concluded: _____, 20____
 Method of Disposition: ☐ Plea ☐ Trial ☐ Acquittal ☐ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other

This is a true and correct statement of my service to and expenses for the above named Defendant.

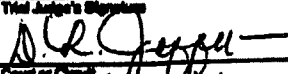
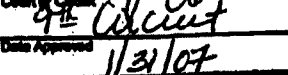
Attorney's Signature:  Attorney's Signature: _____

Check Applicable Category: ☐ Public Defender ☒ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.I.L. NUMBER MUST BE INCLUDED.

Name and Address of Check Payee:
**William Isaac Diggs
 1700 Oak Street, Suite D
 Myrtle Beach, SC 29577**

SSN or F.I.L. Number: _____ TELEPHONE NUMBER: **843.626.4243**

Trial Judge's Signature 
Clerk of Court 
Date Approved 11/31/07
Clerk of Court's Signature 
Clerk of Court (County) Georgetown
Date Certified 2/12/07
OLD FILE NO.:
AGENCY VOUCHER NO.:

DEFENSE OF INDIGENTS VOUCHER

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NONINCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE COMMISSION ON INDIGENT DEFENSE AT 803.734.1343, FAX: 803.734.1345, e-mail: executive@scoid.gov, BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER: South Carolina Commission on Indigent Defense mailing address, P.O. Box 11433, Columbia, SC 29211. For overnight deliveries, send to street address: 1330 Lady Street, Suite 401, Columbia, SC 29201. Please insure that all supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed, but in no event later than June 30th of the year services were completed, in order to be paid.

County Horry		List All Case Numbers (GS, CP, JU or Arrest Warrant Numbers): 2005-GS-26-2927	
Client's Full Name: Stephen Christopher Stanko		List All Charges With CDR Code: Murder, Armed Robbery	
Last Known Address (Prior to Incarceration): 			
Voucher Submitted Under Seal? ☒ YES ☐ NO	Previous Vouchers Submitted For This Client at this level (Trial or Appeal)? (Mistrial/Retrial are considered new cases) ☐ YES ☒ NO	Type of Cases (Most Serious Charge): ☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Status Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ SVP ☐ Other	

Pursuant to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS' FEES

NON DEATH PENALTY CASE FEES

Hours at \$40.00 per hour for Out-of-Court services.....	\$
Hours at \$60.00 per hour for In-Court services (Restricted to actual hearing times)	\$

DEATH PENALTY CASE FEES

Hours at \$50.00 per hour for Out-of-Court services.....	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times)	\$

TOTAL FEES: \$

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$3,600 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,760 in SVP cases.

EXPENSES

Long Distance Telephone Calls	\$
Psychiatric Examination *	\$
Expert Witness(es) * Bernard Abinav	\$ 2,620.00
Investigative Services *	\$
Extraordinary Travel Expenses *	\$
Advanced Payment For Expenses *	\$
Other Expenses (Explain) *	\$

* REQUIRES PRE APPROVAL FROM THE COURT. ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT — ORDER MUST STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE! Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.)..... \$

MAXIMUM EXPENSES allowed are \$20,000 in Death Penalty cases and \$600 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf. \$

TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$ 2,620.00

☐ Advance payment. Date of request for funds (Approval Order attached): _____, 20____
☒ Final submission; no further requests for funds. Date case concluded: **November 19,** 20 **09**
 Method of Disposition: ☐ Plea ☒ Trial: ☐ Acquittal ☒ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other

This is a true and correct statement of my service to and expenses for the above named Defendant.

Attorney's Signature 	Attorney's Signature
Check Applicable Category: ☐ Public Defender ☒ Private Attorney	Check Applicable Category: ☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.E.I. NUMBER MUST BE INCLUDED.

Name and Address of Check Payee:

(Also, Please Provide a valid Email Address)

William Isaac Diggs, 1700 Oak Street, Suite D, Myrtle Beach, SC 29577

APPROVED BY:

Trial Judge's Signature

Court or Circuit

15th Judicial Circuit

Date Approved

11/17/09

CERTIFIED BY:

Clerk of Court's Signature

Clerk of Court For (County):

Horry

Date Certified:

OID FILE NO.:

AGENCY VOUCHER NO.:

3496

3003

SS or F.E.I. Number:

TELEPHONE NUMBER:



November 23, 2009

COASTAL CAROLINA UNIVERSITY

*Department of Psychology
College of Natural and Applied Sciences*

William Isaac Diggs
Attorney at Law
1700 Oak Street
Suite D
Myrtle Beach, SC

Dear Bill:

I am submitting my bill for professional consultation and expert testimony in the Stephen C. Stanko capital murder case.

November 7, 2009: Meeting at your office 11:30 – 1:00 PM, 1.5 hours.

November 13, 2009: Testimony on change of venue, 8:15 – 11:30 AM, 3.25 hours.

November 14, 2009: Testimony on frontal lobe structure and function, 2:30 – 4:50, 2.35 hours.

Total of 6.00 hours expended on review of documents, reports and recently published research relevant to the issues involved in the Stanko case.

Total hours, 13.1 @ \$200.00 = \$2620.00.

Sincerely,

Bernard A. Albinak, PhD
Associate Professor
Coastal Carolina University

inclu \$158.00
pr he

\$1965.00



COASTAL CAROLINA UNIVERSITY

August 24, 2006

Department of Psychology
College of Natural and Applied Sciences

William Isaac Diggs
Attorney at Law
1700 Oak Street
Suite D
Myrtle Beach, SC

Dear Bill:

I am submitting by bill for professional consultation in the Stephen Stanko capital murder case.

May 12: Meeting at your office 1.25 hours @ \$150.00 = \$187.50. Mileage 10 x 2 = 20 miles.

June 21: Meeting at your office 0.67 hours @ \$150.00 = \$100.50. Mileage 10 x 2 = 20 miles.

June 22: 9:00 AM to 3:00 Georgetown county courthouse. Six hours @ \$150.00 = \$900.00. Mileage 37 x 2 = 74 miles.

August 05: Meeting at your office 0.67 hours @ \$150.00 = \$100.50. Mileage 10 x 2 = 20 miles.

August 06: Five hours searching and reading recent published studies of brain-imaging. Five hours @ \$150.00 = \$750.00.

August 08: Georgetown county courthouse, 12:00 to 7:00 PM. Seven hours @ \$150.00 = \$1050.00. Mileage 37 x 2 = 74 miles.



Three hours reviewing documents including medical records. Three @
\$150.00 = \$450.00.

I enjoyed working with you and Gerald Kelley. You and your staff did an
excellent job in an exceedingly difficult case. Your professionalism was
outstanding.

Sincerely,

Bernard Albinak

Bernard Albinak, Ph D

Associate Professor

Coastal Carolina University

$$23.59 \text{ hours} \times \$150.00 / \text{hour} = 3,538.50$$

$$208 \text{ miles} \times .345 = 71.76$$

$$\underline{3610.26}$$

DEFENSE OF INDIGENTS VOUCHER

5-38

NOTICE: Please complete voucher including FULL NAME and LAST KNOWN NON-INCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Appointment to each Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation. If required, deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT 843.734.1343. FAX: 843.734.1345, e-mail: indigent@doj.state.sc.us. BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL VOUCHER along with one copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11433, 1122 Lady Street, Suite 1118, Columbia, SC 29211. Please leave all supporting documentation included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in person from not later than THIRTY (30) DAYS after services were completed, but in no event later than June 30th of the year services were completed, in order to be paid.

County Georgetown	Use All Case Numbers (DB, CP, NJ or Accept Waiver Numbers) H-750173; H-750181; H-75085400
Client's Full Name Stephen Christopher Stanko	H-929318; H-750183
Last Known Address (Type in full) [REDACTED]	Last All Charges Murder; Grand Larceny; CSC w/minor ABWIK; Kidnaping
Voucher Submitted Under Seal? ☒ YES ☐ NO	Previous Vouchers Submitted For This Client at this level (Title or Appeal)? ☐ YES ☐ NO
Type of Case (Check all that apply): ☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ State Offense ☐ PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ PVP ☐ Other	

Personnel in the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEYS' FEES

NON DEATH PENALTY CASE FEES

Hours at \$49.00 per hour for Out-of-Court services	\$
Hours at \$49.00 per hour for In-Court services (Restricted to actual hearing times)	\$

DEATH PENALTY CASE FEES

Hours at \$50.00 per hour for Out-of-Court services	\$
Hours at \$75.00 per hour for In-Court services (Restricted to actual hearing times)	\$

TOTAL FEES: \$

MAXIMUM FEE ALLOWED IS \$25,000 per attorney in Death Penalty cases, \$5,000 in Felony cases, \$1,000 in Misdemeanor and PCR cases, and \$1,750 in PVP cases.

EXPENSES

Long Distance Telephone Calls	\$
Psychiatric Examination - DR. EVELYN CALIFF	\$
Expert Witness(es) -	\$
Investigative Services -	\$
Extraordinary Travel Expenses -	\$
Advanced Payment For Expenses -	\$
Other Expenses (Specify):	\$

* REQUESTS FOR APPROVAL FROM THE COURT, ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT - ORDER MUST STATE REIMBURSEMENT IS ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED. ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE. Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenses where required.) \$

MAXIMUM EXPENSES allowed are \$25,000 in Death Penalty cases and \$500 in all other cases.

Less amount paid by Defendant or by any person on Defendant's behalf. \$

TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER: \$ **4,400.00**

☐ Advance payment. Date of request for funds (Approval Order attached): **August 18, 2006**
☒ Final submission; no further requests for funds. Date case concluded: **August 18, 2006**
 Method of Disposition: ☐ Plea ☐ Trial ☐ Acquittal ☐ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other

This is a true and correct statement of my service to and expenses for the above named Defendant.

Attorney's Signature
[Signature]

Attorney's Signature

Check Applicable Category:
☐ Public Defender ☒ Private Attorney

Check Applicable Category:
☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.I.L. NUMBER MUST BE INCLUDED.

Name and Address of Check Payee:
William Isaac Diggins
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

SSN or F.I.L. Number:

TELEPHONE NUMBER:

843.626.4043

APPROVED BY

Trial Judge's Signature

[Signature]

Court or Clerk

[Signature]

Date Approved

5/15/07

CERTIFIED BY

Clerk of Court's Signature

[Signature]

Clerk of Court (Title)

[Signature]

Date Certified

[Signature]

OLD FILE NO:

5-38

AGENCY VOUCHER NO:

OV 5684

5810-1701