

Apr 11 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) 2017-CP-23-7332
)
)
)
 BRANDON ADAMS)
) APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
 STATE OF SOUTH CAROLINA)
) DEFENDANT)

November 8, 2021
Greenville, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN, Judge.

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

ELIZABETH WIYGUL, ESQ.
Attorney for the Applicant

LILLIAN MEADOWS, ESQ.
Attorney for the State

APRIL HERRON
Official Court Reporter

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APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Transcript 5-15-15	7	7
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1 (WHEREUPON, the following proceedings were held
2 via WebEx.)

3 COURT REPORTER'S NOTE: Due to remote platform
4 interruption and video/audio interference throughout the
5 hearing, those instances are denoted with [audio
6 distortion] in the transcript.

7 THE COURT: Good afternoon, everybody. What
8 we're trying to figure out is because Mr. Adams is on
9 a analogue phone, so because he's on a analogue
10 phone, he can't be put up -- we can't join him in.
11 He can hear --

12 THE LAW CLERK: Yeah, so he can hear the same
13 way, like, that everybody's whose been in the whole,
14 like, the kind of holding area has been able to hear.
15 And I can unmute him so that he can talk. But, like,
16 there's really no way, like, I don't know if he can,
17 like, let us know if he, like, wants to talk. I
18 mean, like, does that make sense? Like, we only can
19 control everything. I can control it but we won't be
20 able to really, like, add him as a panelist, does
21 that make sense?

22 MS. WIYGUL: My only concern is that if we're
23 connecting by phone, Lieber has been having work done
24 on their phones since Friday. And so there has been
25 a lot of issues with being able to hear. And static

1 and getting disconnected.

2 THE LAW CLERK: So should we --

3 MS. WIYGUL: My understanding was that they had
4 the ability to let him appear by video.

5 THE LAW CLERK: So somebody at Lieber -- so
6 somebody at Lieber is telling me that they can hear
7 but they can't get the video up.)

8 (WHEREUPON, a short break was taken while
9 technical issues were being worked out.)

10 THE COURT: Solicitor, we're here on the matter
11 of Brandon Adams. And I'll recognize you,
12 Ms. Meadows, to call the case and we'll go from
13 there.

14 MS. MEADOWS: Thank you, Your Honor, may it
15 please the Court. This PCR matter is Brandon Adams
16 vs. State of South Carolina, docket number
17 2017-CP-23-7332. Mr. Adams was indicted in July of
18 2015 for murder, armed robbery, first degree burglary
19 and possession of a weapon during the commission of a
20 violent crime. On January 4, 2016, Mr. Adams
21 proceeded to a jury trial before the Honorable R.
22 Knox McMahon. Ivan Toney, esquire, represented
23 Mr. Adams and Assistant Solicitor Ryan Holloway and
24 Lucas Marchant prosecuted the case. Mr. Adams, was
25 convicted as indicted and Judge McMahon sentenced him

1 to concurrent terms of 40 years for murder, 30 years
2 for burglary, 30 years for armed robbery and five
3 years for the weapons charge. And his convictions
4 were affirmed by the Court of Appeals.

5 On November 14, 2017, Mr. Adams filed a timely
6 application for PCR. And he is present today
7 represented by Ms. Wiygul. And we discussed several
8 times the allegations she's planning to go forward on
9 but I just ask her to put those on the record before
10 we get started.

11 THE COURT: All right, thank you.

12 All right, Ms. Wiygul.

13 MS. WIYGUL: Your Honor, before we proceed can
14 we make sure that Mr. Toney is back with us?

15 THE COURT: Mr. Toney, are you there?

16 MR. TONEY: Yes, sir. I was listening, didn't
17 know if you wanted my video on.

18 THE COURT: Okay. All right. I think we're all
19 here ready to go.

20 Yes, ma'am, Ms. Wiygul.

21 MS. WIYGUL: Thank you, sir. We are only
22 proceeding on the failure to follow up on Mr. Adams'
23 competency issues and ability to understand. And how
24 that affected the trial in its totality.

25 THE COURT: All right. I'll hear from you

1 further and you can proceed with any witnesses.

2 MS. WIYGUL: Your Honor, we would call Mr. Ivan
3 Toney to the stand.

4 MS. MEADOWS: And, Elizabeth, I don't know if
5 you want to deal with the exhibits now and kind of
6 see how the Judge wants us to do those.

7 MS. WIYGUL: We can go ahead and do that,
8 Ms. Meadows, that's fine with me.

9 Your Honor, I believe that Ms. Meadows and I are
10 in agreement as to the exhibits that would be
11 appropriate in this case.

12 THE COURT: It looks like I got four exhibits;
13 is that it?

14 MS. WIYGUL: That's correct, Your Honor. And I
15 sent them to the court earlier and, I believe,
16 Ms. White was able to print those out for Ms. Herron.

17 THE COURT: They have been printed and marked as
18 exhibits.

19 MS. WIYGUL: Thank you very much, Your Honor.

20 (WHEREUPON, Applicant's Exhibits Nos. 1-4 were
21 marked for identification and received into
22 evidence.)

23 THE COURT: All right, Mr. Adams, you are able
24 to see me, Mr. Adams?

25 MS. WIYGUL: If Lieber can turn off their mute

IVAN TONEY-DIRECT BY MS. WIYGUL

1 button so that Mr. Adams can comment if he needs to.

2 THE COURT: Mr. Adams, can you hear me?

3 MR. ADAMS: Is this mute?

4 THE COURT: All right, raise your right hand.

5 BRANDON ADAMS, after being duly

6 sworn, testified as follows:

7 THE COURT: All right, Ms. Wiygul.

8 MS. WIYGUL: Thank you, Your Honor. We would
9 call Ivan Toney to the stand.

10 THE COURT: All right, if you would raise your
11 right hand.

12 IVAN TONEY, after being duly sworn, testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. WIYGUL:

16 Q Mr. Toney, were you retained on this case?

17 A Yes.

18 Q And you were not the first attorney; is that
19 correct?

20 A There was a public defender.

21 Q All right. And when were you retained?

22 A I mean, I don't know. I mean, a while into the
23 case. I had lots of time to prepare, a year.

24 Q Okay.

25 A I don't know the date, you want me to take it up?

IVAN TONEY-DIRECT BY MS. WIYGUL

1 Q No, that's okay. When did you first meet with
2 Brandon Adams?

3 A 2/5/2015.

4 Q Okay. All right. And Mr. Adams was charged
5 with the murder on February of 2015; is that correct?

6 A That sounds about right. I don't have the file
7 in front of me, the entire file, it's huge. It's, like,
8 enormous. I've got it with me but it's -- you want me to
9 start referring to documents -- if you know the date, that
10 sounds about correct.

11 Q All right, sir.

12 A Start pulling documents out, this is going to be
13 lengthier, you know.

14 Q No, sir, I'm not concerned about the specifics.
15 You testified that you were retained about a year prior to
16 the trial. And then first met with Mr. Adams on -- around
17 February 5th of 2015; is that correct?

18 A Yes, that sounds about right.

19 Q Okay. So--

20 A Because, actually, the trial was in. . .

21 Q I believe it was January 4th, 5th and 6th of
22 2016.

23 A Well, low and behold, that's about a year.

24 Q Yeah, all right. Now, at some point during your
25 representation of Mr. Adams, did you become concerned

IVAN TONEY-DIRECT BY MS. WIYGUL

1 about his competency?

2 A Well, I don't know what you mean by concerned.
3 I mean, I had no real personal concerns. But his mom had
4 raised the issue that he had a IEP in school. And I
5 thought well, you know, I think I better file a motion for
6 a competency exam. But when we went to the hearing with
7 Judge Verdin, she asked if I had any problems with him.
8 Have you had any problems understanding? And I said, No.
9 And, you know, I think she left the door opened, maybe, to
10 come back later. But in your letter, in your Court Order
11 where you got a competency exam, when you were appointed,
12 you said, This competency exam will be dispositive of the
13 issue. And you got him a competency exam and it was found
14 that he was competent.

15 So I understand he may have had one earlier
16 in juvenile, when he was a juvenile too he was found
17 competent. So the quite honest truth is I found him to be
18 highly intelligent. And in our meetings, which were many,
19 many, many meetings, maybe 30 or 40. I got all the dates
20 if you want them. He knew exactly what he was doing, he
21 could describe -- he earned my respect with his insights
22 into his case. And so, you know, the question did I
23 become concerned? Well, you know, they're certain things
24 maybe you do in a case where you feel you should file a
25 competency motion. So I did. I was turned down. So, you

IVAN TONEY-DIRECT BY MS. WIYGUL

1 know, the issue of what -- did I do a competency motion,
2 the answer is I filed one. I was rejected. And you've
3 had one for him. And so now he's competent so. That
4 should answer your question.

5 Q Mr. Toney, I appreciate all of that information.
6 Did you appear at a hearing before Judge Verdin on May
7 15th of 2015, requesting that a competency evaluation be
8 ordered in this case?

9 A I can't remember the exact date but that sounds
10 about right. I don't know what the date was, you would
11 know.

12 Q All right.

13 And, Your Honor, I believe The Court has
14 that transcript in as an exhibit. And I believe the date
15 is May 15th of 2015.

16 THE COURT: I believe that's exhibit number one.

17 MS. WIYGUL: Thank you, Your Honor.

18 BY MS. WIYGUL:

19 Q Mr. Toney, at that hearing, did the Judge tell
20 you that she would order DJJ to release Mr. Adams'
21 competency evaluation to you within 30 days? And that
22 when you got that, if it shed any light on the issues,
23 that she would be happy to have a conference call about
24 that?

25 A You know, I have reviewed the exhibits. It's

IVAN TONEY-DIRECT BY MS. WIYGUL

1 been a little while. And this PCR's been going on like
2 three years. But if that's what you're saying she said,
3 I've got -- I think I can pull them up here. I mean, you
4 know what she said. I'm trying to pull them up.

5 MS. MEADOWS: And I just forwarded to you,
6 Elizabeth, an email from earlier to the court
7 reporter with the four exhibits.

8 MS. WIYGUL: Thank you, Ms. Meadows.

9 MS. MEADOWS: Uh-huh.

10 THE WITNESS: All right, let me look at my
11 email. I will say this, the transcript speaks for
12 itself, I'm sure. I haven't received it yet.

13 BY MS. WIYGUL:

14 Q Well, Mr. Toney, would you agree that if the
15 transcript reflects that the Judge told you that, that
16 that's probably what she told you?

17 A No, I would agree that if that's what the
18 transcript says, that is what she told me.

19 Q Thank you, sir. Did you -- and you did not
20 bring to the Judge's attention that Mr. Adams had been
21 receiving social security administration benefits for a
22 learning disability since 2004, did you?

23 A Well, I didn't know that. That's for a learning
24 disability, right?

25 Q Yes, sir.

IVAN TONEY-DIRECT BY MS. WIYGUL

1 A That's unusual, I didn't know that, no. So, of
2 course, I didn't.

3 Q Mr. Toney, did you ever request the juvenile
4 competency evaluation from 2009?

5 A No.

6 Q Did you ever follow up with any further
7 investigation into Mr. Adams competency or ability to
8 understand?

9 A I don't think I did. I remember thinking about
10 it a long time.

11 Q Can you hear us, Brandon?

12 Your Honor, I don't believe that Mr. Adams
13 is able to hear us judging from the--

14 MR. ADAMS: I can hear you now, the phone went
15 out.

16 MS. WIYGUL: Okay.

17 THE COURT: Can you hear okay now, Mr. Adams?

18 MR. ADAMS: Yes, sir.

19 THE COURT: Okay.

20 MS. WIYGUL: If at any point you cannot hear, if
21 you'll just say something loudly to bring it to our
22 attention, please.

23 MR. ADAMS: Okay, yes, ma'am.

24 THE WITNESS: So when you -- when I look at the
25 thing, she asked if I had any questions about his

IVAN TONEY-DIRECT BY MS. WIYGUL

1 intellectual ability. And I did say I do think he's
2 intelligent, we had meaningful conversations. But I
3 did have some concerns about his ability to
4 comprehend right from wrong and appreciate the
5 consequences of his actions. I mean, I had some
6 thoughts about that. I had no proof that he was
7 psychopath or anything like that, sociopath. But
8 that's different than if he's intelligent. Because
9 we had meaningful conversations. He was intelligent.
10 That he is intelligent.

11 Q Mr. Toney, would it surprise you to know that
12 Mr. Adams full scale IQ is 63?

13 A Yeah, I would believe that.

14 Q Okay.

15 Your Honor, I would ask that the Court take
16 note that the exhibits of Mr. Adams competency
17 evaluations, both in 2009 and 2019, indicate that he has a
18 full-scale range IQ of six -- I'm sorry, of 68. Not 63 of
19 68.

20 THE COURT: Okay.

21 BY MS. WIYGUL:

22 Q Mr. Toney, during the trial of Mr. Adams, there
23 was a very kind of hotly contested Denno hearing, wasn't
24 there? With investigator Wayne Campbell?

25 A I don't know if you call it hotly contested.

IVAN TONEY-DIRECT BY MS. WIYGUL

1 Q Well, you argued against the introduction of the
2 statements, didn't you?

3 A Well, you're asking if there's a hotly contested
4 hearing. And I would state it was a contested hearing. I
5 mean, it was -- it was civil. It was not hotly contested.
6 It was a normal sort of civil motion.

7 Q Okay.

8 A It was professional, you know.

9 Q All right. And the Judge made a determination
10 to let Mr. Adams statement in based on a totality of the
11 circumstances; didn't he?

12 A Uh.

13 Q I would draw your attention to the transcript of
14 the trial, Page 65.

15 A Is that one of the exhibits?

16 Q No, sir.

17 A Well, you want to email me the transcript again?

18 Q Well, if the transcript reflects that the Judge
19 made his decision based upon the totality of the
20 circumstances, you would not question that?

21 A Would you publish what he said, please? I know
22 it's not for me to ask a question but.

23 Q Sure. Line -- Page 64, Line 4. THE COURT: It's
24 always the totality of the circumstances.

25 A Well, look, any time a Judge does a Denno

IVAN TONEY-DIRECT BY MS. WIYGUL

1 hearing, I don't know if it's always the totality of the
2 circumstances, there are guidelines. But I think what the
3 Judge was referring to was the way they take all the facts
4 into consideration and they make a judgment call. And I
5 think that's what the Judge was referring to.

6 Q Mr. Toney, do you feel that you should have
7 obtained the juvenile competency hearing as permitted --
8 or competency evaluation as permitted by Judge Verdin?

9 A No.

10 Q Prior to trial?

11 A No.

12 Q Okay. Do you feel that having the information
13 from that competency evaluation may have benefited
14 Mr. Adams in the trial, specifically, as to your
15 questioning of Mr. Campbell in the Denno hearing?

16 A No, Your Honor.

17 No, ma'am.

18 Q Mr. Toney, I would draw your attention to Page
19 65 of the trial transcript, Line 2. And with your
20 permission I'll just read that into the record, Lines 2
21 through 8. This is The Court speaking.

22 If you have an individual that may have an
23 IQ of 70, 65 or below, I mean, that weight may weigh more
24 if you have an individual that has a higher intellectual
25 level. And, of course, you can have individuals with very

IVAN TONEY-DIRECT BY MS. WIYGUL

1 high intellectual levels and very low educational levels.
2 You know, the educational level doesn't measure the
3 intellectual ability.

4 A Well, I -- the fact is he was found to be
5 competent to stand trial. And I really don't believe that
6 IQ score any ways. I think that's the kind of thing that
7 you go in and you try to flunk if you know you're going
8 for a competency exam. And I found him to be very
9 intelligent and know exactly what he was doing. And in my
10 opinion, it would not have altered the Judge's decision.

11 Q Mr. Toney, do you feel like it would have been
12 important for the Judge to know when making the decision,
13 that Mr. Adams could not read a simple sentence?

14 A That is not true. I will tell you right now, he
15 had his discovery, he had his copy. He went over it. I
16 would point out different things. And he would, actually,
17 flip over, you know, 200 pages later and say, what about
18 this and what about this. Not only can he read a simple
19 sentence, Mr. Adams is able to look through hundreds of
20 pages of exhibits, most of which -- a lot of which, in his
21 case, were not correlated, bring them out at the right
22 time. And, you know, analyze them and explain their
23 effect. I'm going to tell you right now, if he's not as
24 smart as anyone in this room or, you know, I think he's
25 close to it. He's highly intelligent. He can look

IVAN TONEY-DIRECT BY MS. WIYGUL

1 through hundreds of pages of exhibits and read them and
2 understand them. And in his own way I came to respect his
3 intelligence. And it is what it is. That's how
4 intelligent he is. The idea that he can't read a simple
5 sentence is -- it's just a -- I don't know what the right
6 word is, it's just false.

7 Q Mr. Toney, would it surprise you to know that
8 these evaluations reflect that Mr. Adams cannot tell time
9 from an analogue clock?

10 A Certainly doesn't prevent him, if that is true,
11 which I do not for a moment believe that, when looking
12 through hundreds of pages of exhibits and interviews and
13 incident reports and commenting on them in great detail,
14 analyzing things. By the way, you say he can't read a
15 sentence, he had written plans, which they seized from his
16 house or somewhere, of how he was going to run his
17 business. I mean, I remember those plans. One of them
18 was he set limits. Said don't bring so much money in with
19 you everyday. Said you're blowing too much on drugs,
20 using your own stash, getting high on your own supply.
21 Another one was something to the effect of don't be
22 packing a weapon when murder's on your mind. So he knew
23 he had murderous rage. And he had enough insight to
24 realize, I have a self-control problem, I need to not
25 carry, you know, in these particular circumstances.

IVAN TONEY-DIRECT BY MS. WIYGUL

1 He had written goals. Like, I'm going to
2 set up a grow house, a greenhouse, is what he called it.
3 And what he wanted was a house with some lights where he
4 could grow his own stash and increase his business. So I
5 had his record with his own written business plans. So if
6 you tell me that he can't read a clock and he can't read a
7 sentence, you have to sort of figure out a way to explain
8 his written business plans, which would, actually,
9 probably pass mustard down at the SBA when he's applying
10 for a loan, if it wasn't for an illegal thing. He knows
11 what he's doing, he can read and write and articulate. He
12 can correlate hundreds of pages. And he's able to write
13 corrigibly. As you've seen in his PCR application, I
14 might add.

15 Q Mr. Toney, are you aware that Mr. Adams
16 routinely has other inmates write documents for him and
17 read those documents to him?

18 A That would be for you to call the witnesses to
19 prove.

20 MS. MEADOWS: Your Honor, I object. I mean,
21 we're talking about the evaluation that was done by,
22 you know, the department of mental health. He was
23 found competent. I'm not sure what, you know, going
24 into these specific matters--

25 THE COURT: I'll--

IVAN TONEY-DIRECT BY MS. WIYGUL

1 MS. WIYGUL: Your Honor, it's the belief of the
2 Applicant that not only the determination of
3 competency versus incompetency is important, but also
4 the information that is contained within the
5 evaluation.

6 THE COURT: I'll give you some leeway. I'll
7 give you some leeway. I'll overrule for right now.
8 I'll give you a little leeway.

9 MS. WIYGUL: Thank you, sir. I'll try and
10 backtrack and lay a little bit more foundation.

11 BY MS. WIYGUL:

12 Q Mr. Toney, it is true that you visited Mr. Adams
13 nine times in person during the course of your
14 representation? And five times by video.

15 A Okay. I did not visit him by video. I visited
16 him, Brandon Adams, on 2/5 for an hour. On another time
17 on 2/5 for another hour. I saw him in a meeting for two
18 hours.

19 Q What date, sir?

20 A On 2/5. Another two hours. I saw him another
21 time for 60.67 points of an hour. So on that day I saw
22 him a lot. I saw him on 2/6 for 40 minutes. I saw him
23 on--

24 Q Mr. Toney, I have the jail records as to your
25 visits. Would you like me just to read those to you and

IVAN TONEY-DIRECT BY MS. WIYGUL

1 see if they match your recollection?

2 A You can say it all want, I don't know what you
3 have. But I know this, I have written I met him on 2/16
4 in the jail. I met him in the old jail on 2/16, also.
5 Let me see. I met him in the jail on March the 1st. I
6 met him in the jail on March the 7th. I met him in the
7 jail again on March 27th. I met him in the jail on -- I
8 hope someone is counting this for me -- on 4/11. I met
9 him in the jail on, let me see, 5/15. This is all of
10 2015. Let's see. I have another meeting 7/21/2015, on
11 8/5/2015, on 9/16/2015, on 10/28/2015, on 12/10/2015,
12 2/13. Okay, that's someone else I met with in this case.
13 I met him on 2/13. Okay, I got two meetings there.

14 Q I'm sorry, Mr. Toney, on February 13th?

15 A No, that was another date. That was 12/13, I'm
16 sorry. On 12/28 I met him in the jail. 12/28, I met him
17 in the jail again. These are long meetings. That one was
18 for three hours, the other was for two. I had him on New
19 Year's day, I met him for three hours. And then back
20 again the next day for another hour. Then before the
21 hearing I met him in jail on 1/5. Then the trial was 1/6.
22 Those are my dates.

23 Q I believe the trial started on January 4th,
24 Mr. Toney, but. So, it is your testimony that you never
25 met with Brandon via video at the jail?

IVAN TONEY-DIRECT BY MS. WIYGUL

1 A I don't think I ever met with him on video, no.

2 Q Okay.

3 A I don't think I ever met with a inmate on video
4 at the jail. Could be wrong but I don't recall ever doing
5 that. To me it's easier to go down there.

6 Q Now, Mr. Toney, you agree that you were
7 concerned about Mr. Adams competency as of May of 2015,
8 correct?

9 A That is the answer I gave you. And if you look
10 at the transcript with Judge Verdin, there was some
11 concerns I had about his ability to distinguish right from
12 wrong. But I told Judge Verdin that the meetings were
13 good and he was intelligent. So I had some concerns about
14 his ability to understand right from wrong. He's very
15 nice. He's very respectful.

16 Q All right. Mr. Toney, a hearing was held on May
17 15 of 2015, would agree with that?

18 A I've already agreed to that. And we've already
19 established that.

20 Q And at that hearing the Judge gave you the
21 ability to order a competency evaluation that had been
22 previously performed on Mr. Adams; is that correct?

23 MS. MEADOWS: Your Honor, I just object to
24 leading. And I would ask that Mr. Toney be able to
25 finish answering the question.

IVAN TONEY-DIRECT BY MS. WIYGUL

1 THE WITNESS: -- what she said, repeat the
2 question again.

3 BY MS. WIYGUL:

4 Q Mr. Toney, I just ask that you pull up that
5 transcript that Ms. Meadows sent you and you can reference
6 it.

7 A I just had it. Now it's popped off my screen.
8 Hang on.

9 MR. ADAMS: Hello.

10 MS. WIYGUL: Yes, sir, can you hear us?

11 THE COURT: Mr. Adams, you need something? Can
12 you hear us, Mr. Adams?

13 MS. WIYGUL: Can you hear us, Mr. Adams?

14 (There was no response.)

15 THE COURT: Hold on.

16 MS. WIYGUL: I don't think he can hear us.

17 THE COURT: Mr. Adams, can you hear us?

18 MS. WIYGUL: Mr. Adams, if you can hear us,
19 please unmute yourself and say something so we'll
20 know.

21 THE WITNESS: Ms. Wiygul, the best thing for you
22 to do, perhaps--

23 MS. WIYGUL: Your Honor, would you like me to
24 email Lieber and let them know that Mr. Adams cannot
25 hear?

IVAN TONEY-DIRECT BY MS. WIYGUL

1 THE COURT: Mr. Adams, can you hear?

2 (There was no response.)

3 THE COURT: Mr. Adams.

4 (There was no response.)

5 THE COURT: Yeah, if you would email them. I
6 tell you, go ahead, my law clerk is going to call
7 right now.

8 MS. WIYGUL: Okay.

9 THE COURT: Mr. Adams, we can hear you, can you
10 hear us?

11 (There was no response.)

12 MS. WIYGUL: Your Honor, I've emailed Ms. Brit
13 Houser at Lieber and. . .

14 THE COURT: Okay, we're also calling.

15 (WHEREUPON, a short break was taken while
16 technical issues were being worked out.)

17 THE COURT: Mr. Adams, can you hear us?

18 MS. WIYGUL: Brandon.

19 MR. ADAMS: Yeah.

20 MS. WIYGUL: Okay.

21 BY MS. WIYGUL:

22 Q Mr. Toney, do you recollect appearing in front
23 of Judge Verdin in May of 2015, regarding a motion that
24 you filed relative to Mr. Adams competency?

25 A You know, we've got a transcript introduced into

IVAN TONEY-DIRECT BY MS. WIYGUL

1 the record. We've not only admitted that but we're now
2 discussing the details of it. Quite respectfully, that is
3 asked and answered and we're well beyond the [audio
4 distortion] in the hearing. I'm sorry.

5 Q Mr. Toney, I'm going to take that as a yes and
6 move on. I was trying to make sure that Mr. Adams knew
7 what we were referencing, since he has not been able to
8 hear all of this hearing. After that hearing, did you do,
9 as the Judge instructed, and request a copy of Mr. Adams
10 juvenile competency evaluation?

11 A I deny the Judge instructed me or requested that
12 I get--

13 MR. ADAMS: Hello. Yeah, the phone was good for
14 a while then the phone was just disconnected, we got
15 to call back.

16 MS. WIYGUL: I'm sorry, sir, can y'all hear us
17 right now?

18 THE COURT: My law clerk stepped out to talk to
19 him.

20 (WHEREUPON, a short break was taken while
21 technical issues were being worked out.)

22 THE COURT: Can you hear us?

23 MR. ADAMS: Yes, we can hear you guys.

24 MS. WIYGUL: Sir, can you hear us now? Hello,
25 can you hear us?

IVAN TONEY-DIRECT BY MS. WIYGUL

1 THE COURT: Can you hear us?

2 THE LAW CLERK: Can you hear us?

3 MR. ADAMS: Yeah, I can hear you.

4 MS. WIYGUL: I believe, Your Honor, they might
5 be able to hear your law clerk via the phone. I
6 don't think they're hearing the actual hearing.

7 THE LAW CLERK: So I'm going to keep my phone on
8 and on speaker so that you can hopefully hear what's
9 going on in the hearing, okay.

10 THE COURT: All right, we're going to put her
11 phone by the speaker on my computer and, hopefully,
12 that will take care of it.

13 MS. WIYGUL: Thank you very much, ma'am, I
14 appreciate that.

15 THE LAW CLERK: No problem.

16 BY MS. WIYGUL:

17 Q Mr. Toney, did you have the information from the
18 juvenile competency hearing during the Jackson v. Denno
19 hearing?

20 A No.

21 Q In which you requested Mr. Campbell?

22 A No.

23 Q And you never requested a conference call with
24 Judge Verdin, did you?

25 A No.

IVAN TONEY-CROSS BY MS. MEADOWS

1 MS. WIYGUL: I don't have any further questions.

2 THE COURT: All right.

3 Ms. Meadows.

4 CROSS-EXAMINATION

5 BY MS. MEADOWS:

6 Q Mr. Toney, what was your understanding of Judge
7 Verdin's ruling at the end of the hearing?

8 A Well, she didn't order me to do anything. She
9 just said, basically, this is what you could do. But she
10 asked if there was a problem understanding him or him
11 understanding you. And I thought about it. And I went
12 home and I thought about it, I thought about it, I thought
13 about it. And the more I thought about it, the more I
14 thought about how smart he is. I've got all these letters
15 from him, which are intelligent. And we just went through
16 everything. And he constantly had one insight after
17 another about his case. And he was just bright. And he
18 understood what he was doing. Now, she had him evaluated,
19 Ms. Wiygul had him evaluated as part of his PCR, and he
20 was found to be competent. And I understand she went and
21 got the juvenile one and he was competent in that. So in
22 her juvenile -- in her request for an order, she put in
23 her order for a competency exam, that this will be
24 dispositive of this issue of competency. So as far as I'm
25 concerned, that's what she says. And he's been found

IVAN TONEY-CROSS BY MS. MEADOWS

1 competent twice.

2 Q Okay. Well, I'm just talking about Judge
3 Verdin's ruling. Was it your understanding that she was
4 ordering you to follow up with something or what was your
5 interpretation of what?

6 A It's clear to me that she wasn't ordering it.

7 Q Okay.

8 A She was just allowing it.

9 Q Okay. And then as far as the Denno hearing, I
10 believe you did argue that Mr. Adams had a low IQ and
11 that's why the statements should be suppressed. Or was
12 that part of your argument?

13 A I'm trying to remember. What does it say in the
14 transcript?

15 Q Sorry, just one second, I lost my place.

16 A I want to say this. If you look at the
17 competency evaluation they say, In our opinion Mr. Adams
18 has the capacity to understand the proceedings against him
19 and assist his own defense.

20 That's exactly how it was.

21 MS. WIYGUL: Ms. Meadows, I believe you're
22 looking for Page 61.

23 THE WITNESS: With regard to his capacity to
24 understand the legal proceedings, Mr. Adams was aware
25 of the charges, he's seeking PCR for the possible

IVAN TONEY-CROSS BY MS. MEADOWS

1 outcomes. In addition, with limited legal education,
2 he demonstrates sufficient understanding of the roles
3 of court personnel and court proceedings. Was able
4 to apply legal knowledge to his own case in a
5 rational, beneficial manner.

6 I mean, he would write to me, we would talk. He
7 went over hundreds of pages of information. He's
8 been found to be competent twice. And, you know, he
9 was just very articulate. I understand he's got a
10 low IQ on his test but they go in and they malingering
11 on these tests because they realize if they get a
12 high score, that's going to hurt them. So, you know,
13 I just think it's likely that part of his general
14 intellectual ability, he was motivated to not do well
15 on the IQ test.

16 Q Right. But I'm just saying even though you did
17 not, you know, obtained that evaluation, you did make that
18 argument; correct?

19 A If you say I did, I did. If it's in the
20 transcript, yeah.

21 Q Okay. And that is on Page 61. So, I mean, if
22 you did make that argument, do you think having that
23 evaluation, wherein he was found competent, would have
24 affected whether the Judge would have suppressed the
25 statements or not?

IVAN TONEY-CROSS BY MS. MEADOWS

1 A No, I don't think so.

2 Q Okay.

3 A I wish I had the transcript in front of me but
4 it's probably not one of those four exhibits.

5 Q Let me -- I can email it to you really quick.

6 A Yeah, if you'd email it to me again that would
7 be great. I did email you a little while ago and ask you
8 to re-email it.

9 Q Okay. I'm sorry.

10 A I think you sent it to me in the past. I've
11 reviewed it but it's been pending three or four years, I
12 think.

13 Q Right. Okay. Just sent it to you so you should
14 be getting it any second.

15 A I'm still not seeing it for whatever reason.

16 Q Okay, give it a few more seconds, it's about 400
17 pages so it may take a second to go through.

18 A I'm sorry, I should have it just sitting here.

19 Q That's okay.

20 A That's very kind of you to wait. Here, I found
21 it, you emailed it to me a few months ago. Let me see,
22 what page do you want me to go to?

23 Q Sixty-one, I believe.

24 And, Your Honor, I don't have any other
25 questions for Mr. Toney, I'd just like to give him the

IVAN TONEY-CROSS BY MS. MEADOWS

1 opportunity to skim it real quick.

2 THE COURT: Yeah, sure. I'll give you that
3 opportunity. Or him that opportunity.

4 THE WITNESS: Look, what's the question again,
5 Lily?

6 BY MS. MEADOWS:

7 Q I was, basically, just asking you if you're
8 still able to make that argument, correct? That, you
9 know--

10 A I made the argument. The education and, you
11 know, I made the argument.

12 Q Okay. And you don't believe -- or let me
13 rephrase that. Do you believe that had you obtained that
14 2009 evaluation where he was also found competent, would
15 that have affected anything that you presented to the
16 court in support of --

17 A That would have, actually, backfired on me,
18 wouldn't it? Because an evaluation where he's found
19 competent would have not helped. I think it would have
20 shown that he's competent. So it's a good thing for him
21 it didn't come in.

22 Q Okay.

23 Judge, I have no further questions of
24 Mr. Toney.

25 THE COURT: All right, any redirect?

IVAN TONEY-REDIRECT BY MS. WIYGUL

1 believe they found another IQ on another occasion. You
2 say that his IQ is recognized. I don't admit that's his
3 IQ. I have no doubt in my mind, on my life, that it's a
4 lot higher. And that would not have changed the outcome
5 of that hearing, that's my testimony.

6 Q All right. And it is also your testimony that
7 you believe that Mr. Adams could read very well whenever
8 he went to trial?

9 A Yes. Let me make a statement.

10 Q If--

11 A Getting out--

12 Q I'll be happy to let you make a statement, sir,
13 but I'd ask that you let me finish my questions first.

14 A Well--

15 Q On Page 61 of the transcript, did you question
16 Mr. -- or did you make the argument that your client could
17 not read sufficiently?

18 A Well, I guess, I did.

19 MS. WIYGUL: Thank you, sir, no further
20 questions.

21 THE COURT: All right, anything else,
22 Ms. Meadows? Any recross?

23 THE WITNESS: Actually, I want to correct
24 myself. I said my client was given a document and he
25 said he could barely read. So I said, Now, he's gone

IVAN TONEY-REDIRECT BY MS. WIYGUL

1 to the 10th, so presumably he had a ninth grade
2 education and he could barely read, which is often
3 the way of saying they can't read.

4 So I think if you got to parse -- I hope you
5 don't mind me expounding my answer, I know you've
6 already -- but I think my answer was very -- I parsed
7 everything.

8 I said, My client claims he can't read. And
9 then I said, It was presumably he could barely read.
10 And then I said, This is a way of often saying they
11 can't read.

12 So I didn't get up and say he couldn't read or
13 couldn't barely read. I made the argument that he
14 said he could barely read. And I made the argument
15 that he didn't have a lot of education. It's quite
16 different than saying he can't read. Lawyers make
17 that argument all the time. If they're uncertain of
18 a fact or if they feel they have a duty to convey
19 their client's point of view, they will say, well, my
20 client says such and such. But the fact is he and I
21 had been corresponding for a long time. And we had
22 our -- I was making a Jackson vs. Denno argument and
23 I was aware of his intelligence. So quite a bit
24 different--

25

IVAN TONEY-REDIRECT BY MS. WIYGUL

1 BY MS. WIYGUL:

2 Q I'm sorry, Mr. Toney, you were aware of his
3 intelligence as measured by yourself or by the department
4 of mental health?

5 A I have, in my opinion, a rough idea of -- I can
6 eyeball someone and I can tell if they're intelligent. I
7 think I can probably figure out what their IQ is. Maybe
8 within -- maybe not as -- maybe better than the department
9 of mental health can on occasions. I'm sure they have --
10 if someone's cooperative, the department of mental health
11 can do a great job. But if someone is up there
12 malingering and trying to fail the test, which I have no
13 idea that happened, but there's certainly a lot of
14 motivation too, they're not going to be able to make the
15 proper determination, it's just not possible. So I can
16 look at someone and I can say this guy is average
17 intelligence. You want me to come up with a number? No.
18 But I can say this guy's average or this guy's below
19 average. This guy's above average. And I do that all the
20 time.

21 And Brandon Adams has average to above
22 average intelligence. And certainly, he's able to
23 simulate vast amounts of information. I made my own
24 estimation about his intelligence. I don't know if that's
25 quite the same as saying I can guess his IQ, I'm not going

BRANDON ADAMS-DIRECT BY MS. WIYGUL

1 to presume that. But I was confident that he understood
2 everything. As the department of mental health made a
3 determination that he could understand his proceedings.
4 My estimation and their estimation is the same. That's my
5 answer.

6 MS. MEADOWS: Your Honor, I have nothing
7 further. I'm not sure. . .

8 THE COURT: I wasn't sure if anybody --
9 Ms. Wiygul, were you finished?

10 MS. WIYGUL: Your Honor, we would call Brandon
11 Adams.

12 THE COURT: All right.
13 I already sworn you in, Mr. Adams.

14 MR. ADAMS: Yes, sir.

15 DIRECT EXAMINATION

16 BY MS. WIYGUL:

17 Q Brandon, can you hear me okay?

18 A Yes, ma'am.

19 Q Okay. Do you remember when you first met
20 Mr. Toney?

21 A I think I was in lockup, in the SHU.

22 Q Okay. And how long had you been there by the
23 time you met Mr. Toney?

24 A I think probably -- I be guessing 30 days, I
25 don't remember.

BRANDON ADAMS-DIRECT BY MS. WIYGUL

1 Q Okay. Did you tell Mr. Toney that you did not
2 understand what he was telling you and the conversations
3 you were having with him?

4 A Yes, ma'am.

5 Q Okay. When did you tell him this, do you
6 remember?

7 A I can't remember.

8 Q Was it early on?

9 A Early on, like, before trial and all that.

10 Q Well, was it, like, in your first couple of
11 meetings or was it after he had already started reviewing
12 the discovery with you?

13 A I really can't remember, I think it was around
14 that time.

15 Q Okay. Did you tell Mr. Toney that you could not
16 read?

17 A Yes, ma'am.

18 Q Mr. Toney has testified that you corresponded
19 with him, did you have other inmates writing letters for
20 you?

21 A Yes, ma'am, Jonathan Rhodes.

22 Q Okay. Did you tell Mr. Toney that?

23 A I only had him write me one letter.

24 Q Okay. So when Mr. Toney says you had multiple
25 communications, did you ever write Mr. Toney a letter

BRANDON ADAMS-DIRECT BY MS. WIYGUL

1 yourself?

2 A I never wrote a letter--

3 MS. MEADOWS: Your Honor, I object to leading.

4 THE COURT: Overruled, I'll allow it.

5 BY MS. WIYGUL:

6 Q I'm sorry, Brandon, what did you say?

7 A I say I never wrote him a letter. I always talk
8 to him in person.

9 Q Okay. Do you remember appearing in front of
10 Judge Verdin in May of 2015?

11 A Yes, ma'am.

12 Q What was your understanding? What were you told
13 was going to happen after that hearing?

14 A You say what was I told after the hearing?

15 Q What did Mr. Toney tell you was going to happen
16 after that hearing?

17 A I thought I was going to get a competency
18 hearing.

19 Q Okay. And did Mr. Toney ever talk to you about
20 that hearing again?

21 A No, ma'am. Three months later her he came in
22 with a plea.

23 Q Okay. And when he came to visit you about the
24 plea, did he talk to you about getting a copy of your
25 competency evaluation from when you were a juvenile?

BRANDON ADAMS-DIRECT BY MS. WIYGUL

1 A After Judge Verdin, I never heard nothing about
2 a competency hearing.

3 Q Okay. Did -- the last time Mr. Toney came and
4 talked to you, how many days before trial was that? Do
5 you remember?

6 A I really don't remember.

7 Q Okay. But it was just a day or two before
8 trial, right?

9 A I think so. I don't know for a fact.

10 Q Okay. Well, when you went to trial, when you
11 were transported up to the courthouse, where did you think
12 you were going?

13 A I knew I was going to court. I didn't know -- I
14 ain't know what I was going for.

15 Q Okay. Did Mr. Toney tell you you were going for
16 your trial, for a jury trial?

17 A I think when I got there, yeah.

18 Q When you got there. Did he tell you anything
19 before you were at the courthouse?

20 A No, I just remember looking over videos.

21 Q Okay. Did Mr. Toney explain to you that you had
22 the right to testify at trial?

23 A No, ma'am.

24 Q Okay. When's the first time you heard about
25 that?

BRANDON ADAMS-DIRECT BY MS. WIYGUL

1 A When the Judge asked me did I want to?

2 Q And did you want to?

3 A I didn't really understand what was going on, so
4 I didn't want to make anything worst so I didn't say
5 nothing.

6 Q All right. Thank you, Brandon.

7 THE COURT: All right, cross --

8 BY MS. WIYGUL:

9 Q Brandon, did you --

10 THE COURT: Oh, I'm sorry. I'm sorry.

11 BY MS. WIYGUL:

12 Q Did you receive social security disability
13 benefits pretty much your whole life?

14 A Yeah, until I got locked up.

15 MS. WIYGUL: Okay. All right. Thank you,
16 Brandon. I don't have any further questions. Please
17 answer any questions Ms. Meadows might have.

18 THE COURT: All right, cross-examination.

19 MS. MEADOWS: I don't have any questions for
20 this witness, Judge.

21 THE COURT: All right.

22 All right, Ms. Wiygul, any other witnesses?

23 MS. WIYGUL: No, Your Honor.

24 THE COURT: All right, anything --

25 MS. WIYGUL: We would --

1 THE COURT: Ma'am?

2 MS. WIYGUL: We would ask that this Court review
3 this case under kind of a cumulative mistakes type of
4 analysis. Had Mr. Toney obtained the juvenile
5 competency evaluation that Judge Verdin ordered that
6 DJJ produce within 30 days for Mr. Toney, then he
7 would have had the appropriate information he needed
8 to make an effective Jackson v. Denno argument and to
9 have Mr. Adams statements suppressed. Which would
10 likely have resulted in a different outcome of this
11 trial.

12 THE COURT: All right, Ms. Meadows.

13 MS. MEADOWS: Can I respond to her argument or?

14 THE COURT: Yes.

15 MS. MEADOWS: Your Honor, I would just argue
16 that South Carolina does not recognize cumulative
17 error as far as ineffective assistance of trial
18 counsel. And -- I'm sorry, I lost my train of
19 thought.

20 THE COURT: Take your time.

21 MS. MEADOWS: Well, I'm just going to disagree
22 with Ms. Wiygul's interpretation of Judge Verdin's
23 ruling. I don't believe that she ordered any follow
24 up or anything further. But that's--

25 THE COURT: I want to make sure I'm clear too,

1 just following up, Ms. Meadows and to Ms. Wiygul. An
2 evaluation was ordered and an evaluation was
3 conducted. And an -- looks like back on 2019. And
4 the conclusion was that, I think it was 2019, the
5 conclusion was that he was competent to stand trial;
6 is that correct?

7 MS. WIYGUL: That is correct, Your Honor.

8 MS. MEADOWS: Yes.

9 MS. WIYGUL: And our argument is that had
10 Mr. Toney obtained the juvenile evaluation back in
11 2015, he would have had all the information out of
12 that evaluation, even if Mr. Adams was competent,
13 Mr. Toney was aware enough to know that there were
14 issues. And he would have been able to bring those
15 issues up and use them effectively in plea bargaining
16 and at trial.

17 THE COURT: Okay.

18 All right, anything in response, Ms. Meadows?

19 MS. MEADOWS: Your Honor, I just briefly would
20 like to call -- I'm not sure if Mr. Adams has rested
21 or not but if he has, I'd just like to recall
22 Mr. Toney.

23 THE COURT: Yes, Ms. Wiygul, you have rested,
24 correct?

25 MS. WIYGUL: Yes, Your Honor.

1 THE COURT: Okay.

2 All right, Ms. Meadow, you can call.

3 MS. MEADOWS: All right, The State calls Ivan
4 Toney.

5 THE COURT: All right, Mr. Toney, you're already
6 under oath.

7 MR. TONEY: Yes, sir.

8 DIRECT EXAMINATION

9 BY MS. MEADOWS:

10 Q Okay. Mr. Toney, did Mr. Adams tell you that he
11 did not understand what was going on before trial?

12 A That is so far the chanter of our conversations,
13 that it's just right perjury. He didn't say it, he knew
14 exactly what was going on. He was sitting with me
15 strategizing about how the trial would go, what would
16 happen. He talked to me about who was going to be there
17 for him. How his family was going to be there. He had a
18 sister who knew some things and they had her under a, I
19 think they had her under a charge of assisting him in some
20 way or another, I forgot what the charge was. But they
21 were going to get her to testify, she didn't testify, it
22 all blew up in her face and she ended up doing some time.
23 It was accessory after the fact or something like that.

24 But we sat and strategized about whether or
25 not he would testify and he would say, I've already talk

IVAN TONEY-DIRECT BY MS. MEADOWS

1 to her, she's not going to testify. So he not only knew
2 he was going to trial, but he had already talked to
3 witnesses about it; made sure they were on board and we
4 talked about this on several occasions. I'm like,
5 Brandon, you sure this witness is not going to crack and
6 turn on you? And he's like, no, I got that covered, blah,
7 blah, blah, blah, blah. So he knew exactly what he was
8 doing, he had already talked to the witnesses and his
9 family. Made sure they were on board. He was
10 coordinating the trial strategy in part, you know. He was
11 the one doing this on his own. So not only does he not --
12 not only does he understand but he's, actually, sort of
13 aggressive and diligent and he's working on it. And he's
14 planning it, getting with witnesses. It's just totally
15 bogus to say he didn't understand he was going to trial.
16 It's just this, you know, that's all I have to say about
17 that. I could say a lot more, he had many more things in
18 his strategy, you know. He was concerned what about he
19 would wear, things like that. Wanted to know who the
20 Judge was. Many other things.

21 Q Okay. And did you discuss with him his
22 Constitutional rights including his right to testify?

23 A Yes, yes, of course. Always do that.

24 Q Okay. And when the Judge was advising him of
25 that, did he indicate he did not understand what was going

IVAN TONEY-CROSS BY MS. WIYGUL

1 on?

2 A No, he didn't indicate that.

3 Q Okay. And at any point at trial, did he
4 indicate to you that he did not understand what was going
5 on?

6 A No. He knew what was going on. And I remember
7 being concerned about his sister. And I remember him
8 calming me down about that. I mean, he was like just
9 relax, we got this or something to that effect. She's not
10 going to testify, none of those other people are going to
11 testify. So he was -- he was smart. He knew what he was
12 doing, he was very much involved in this.

13 Q Okay. And have you had, at this point, had a
14 chance to review that evaluation from 2009?

15 A Yes.

16 Q Is there anything in there that you would have
17 argued to the Judge that, you know, you think would have
18 supported suppressing the statement for the Denno hearing?

19 A No, I do not.

20 MS. MEADOWS: Okay, no further questions, Judge.

21 THE COURT: All right, cross?

22 MS. WIYGUL: Just very briefly.

23 CROSS-EXAMINATION

24 BY MS. WIYGUL:

25 Q Mr. Toney, it's your testimony today that had

IVAN TONEY-CROSS BY MS. WIYGUL

1 you been aware that Mr. Adams had an IQ of 68, you would
2 not have brought that to the Judge's attention during the
3 Denno hearing?

4 A That's correct. I believe that he understood
5 exactly what was going on. And, indeed, he did obtain a
6 competency exam which found him competent.

7 MS. WIYGUL: I don't have any further questions,
8 Your Honor.

9 THE COURT: All right, anything further
10 witnesses from The State?

11 MS. MEADOWS: No, Your Honor, The State rests at
12 this point. I would like to briefly have a small
13 sort of closing argument but that's it as far as
14 testimony.

15 THE COURT: Okay, I'll hear from both you.
16 Ms. Wiygul.

17 MS. WIYGUL: Your Honor, I think I jumped the
18 gun on that one. I think I've already made my
19 closing statement. But our argument would be that
20 had Mr. Toney obtained the 2009 competency evaluation
21 prior to going to trial, whether Mr. Adams would have
22 been found competent at that point or not, Mr. Toney
23 would have known that he had a client with an IQ of
24 68. Who would not tell time with an analogue clock
25 and was unable to read a simple sentence. At least

1 as measured by the South Carolina Department of
2 Mental Health professionals. Had he had that
3 information, it is very obvious from the comments
4 made by Judge McMahon in ruling on the Jackson v.
5 Denno hearing, that, especially, the fact that
6 Mr. Adams had a IQ of 68 would have weighed heavily
7 into his decision. And I believe that is located on
8 Page 65 of the transcript.

9 THE COURT: All right, Ms. Meadows.

10 MS. MEADOWS: I'm sorry, Your Honor, just
11 briefly, I'd like to look at Mr. -- I'm sorry,
12 Ms. Wiygul's citation to the transcript.

13 THE COURT: Okay, sure.

14 MS. MEADOWS: Page 65?

15 MS. WIYGUL: Page 65.

16 THE COURT: Take your time.

17 MS. MEADOWS: Okay. I would disagree that had
18 Mr. Toney brought up Mr. Adams IQ that that would
19 have affected, according to Judge McMahon's statement
20 on Page 65, he just says, You can have individuals
21 with very high intellectual levels and low
22 educational levels. You know, the educational level
23 doesn't measure intellectual ability.

24 And, you know, the test for determining
25 competency to stand trial is whether the Defendant

1 has the present ability to consult with his lawyer to
2 a reasonable degree of rational understanding. And
3 whether he has a rational, as well as a factual,
4 understanding of the proceedings against him; it's
5 not an IQ test or reading comprehension test.

6 And in the Order for Competency Evaluation that
7 Judge Gravely issued in 2018, I believe the third
8 paragraph it states that it's the belief of the
9 attorneys for both Applicant and the Respondent that
10 occurred at the competency evaluation, would be
11 dispositive of the majority of the issues in this
12 case. And that competency evaluation was completed
13 in 2019. And Mr. Adams was found competent. And to
14 the extent that Mr. Adams claims that Mr. Toney was
15 ineffective for not following up regarding that 2009
16 evaluation, it's our position that he cannot show
17 prejudice under Strickland because Mr. Adams was
18 found competent in the 2009 evaluation.

19 And the controlling case for ineffective
20 assistance of counsel in the context of competency is
21 Jeter v. State. And, essentially, the applicant must
22 show that there's a reasonable probability that he
23 was incompetent at the time of the trial. And, I
24 think, we have a 2009 evaluation when he was found
25 competent and a -- I'm sorry, 2009 and 2019

1 evaluation, both of which he was found competent. I
2 don't see how he can meet his burden of proof on
3 that. And I would also note that Medina v.
4 California, it's a United States Supreme Court case.
5 It notes the significance of trial counsel's opinion
6 regarding competency. Trial counsel interacts with
7 the Defendant the most and is in the best position to
8 evaluate whether the Defendant is able to assist
9 meaningfully in the proceedings. And I believe,
10 clearly, from Mr. Toney's testimony, that he believed
11 that Mr. Adams was able to participate meaningfully
12 in the proceedings and his trial strategy. Thank
13 you, Your Honor.

14 THE COURT: All right. Thank you all.

15 MS. WIYGUL: Thank you, Your Honor.

16 THE COURT: I'll take it under advisement and
17 I'll let you know of my decision. Hope all of you
18 have a good day. Thank you.

19 MS. MEADOWS: Thank you, Judge.

20 MS. WIYGUL: Thank you, Judge.

21 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the Eighth day of November, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 11, 2022

APRIL P. HERRON, Court Reporter