STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

Appellate Case No. _____

MARION BOWMAN, JR., SK #6006,

Petitioner,

v.

BRYAN P. STIRLING, Commissioner, South Carolina Department of Corrections,

Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS

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INTRODUCTION

Marion Bowman, Jr. seeks relief from his convictions and death sentence,[1] which were obtained on the basis of incentivized testimony from witnesses whose credibility could have been undermined but for the State's failure to turn over impeaching evidence as required by *Brady v. Maryland*, 373 U.S. 83 (1963), and trial counsel's injection of racial bias in the proceedings and failure to adequately represent Bowman in trial and sentencing due to his own racism and biases. Bowman's death sentence is also excessive under S.C. Code § 16-3-25(C)(3) evaluated in the context of this Court's original writ jurisdiction, which Bowman asserts should include consideration of the mitigation evidence available now after Bowman has spent more than 22 years on death row. Due to the finality and irrevocability of the penalty of death, the United States Supreme Court has stressed the "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). Because Bowman has exhausted the regular course of appeals in his case, a writ of habeas corpus in this Court's original jurisdiction is appropriate to ensure reliability in this death penalty case, and ultimately to reverse Bowman's convictions and sentence that were obtained in violation of both the United States and South Carolina Constitutions.

I. RELEVANT FACTS AND PROCEDURAL HISTORY.

a. Trial Proceedings.

Marion Bowman, Jr. was convicted of murder and arson, third degree, in Dorchester County, South Carolina, for the death of Kandee Martin, who had been shot to death and—hours later—placed in the trunk of her car, which was set on fire. The primary witnesses implicating Bowman were James ("Tawain") Gadson and Travis Felder, both of whom were charged in the

[1] Bowman's execution has not yet been scheduled. According to this Court's prior orders, Bowman's execution is likely to be scheduled in January 2025.

case and testified in exchange for plea agreements to greatly reduced sentences, and Hiram Johnson, who attributed a cold-blooded confession to Bowman. The prosecution pointed to Johnson as the centerpiece of its case in closing arguments in both the guilt and sentencing phases.

i. *The Trial Evidence Not Adduced from Gadson, Felder, and Johnson.*

The State's evidence that was not reliant on Gadson, Felder, and Johnson was merely circumstantial. That evidence revealed Martin's body was recovered from the trunk of her burning car in a rural area alongside Nursery Road in the early morning hours of February 17, 2001. *State v. Bowman*, 366 S.C. 485, 489, 492, 623 S.E.2d 378, 380, 382 (2005). An autopsy established that she was shot to death and deceased prior to the fire. *Bowman v. Stirling*, 45 F.4th 740, 743 (4th Cir. 2022). Shell casings, a fired bullet, blood evidence, and the victim's shoe were recovered at the crime scene. *Id.* at 746. Bowman's DNA was identified from vaginal swabs taken during Martin's autopsy.[2] *Id.* at 744.

In the hours following the discovery of Martin's body, the police arrested Bowman on an outstanding warrant for an unrelated charge of receiving stolen goods. App. 350.[3] The police subsequently arrested Gadson, Bowman, Felder, and numerous others, including Bowman's wife, sisters, and father for principal or accessory involvement in the crimes against Martin. The state subsequently manipulated all these witnesses to change their pretrial statements and to testify

[2] A defense witness in sentencing testified that Bowman and Martin had been alone together in his bathroom for a while and then left his home together earlier that day. *Id.* at 746. Likewise, multiple witnesses testified that Bowman and Martin were friends, who were often seen together. App. 3748, 4033, 4079. The forensic pathologist for the state acknowledged that the seminal fluid from which the DNA evidence was taken could have been present for as much as 48 hours prior to Martin's death. App. 3954. The jury rejected the alleged aggravating factor of criminal sexual conduct during their sentencing deliberations. App. 5021, 5051.

[3] Citations to "App." refer to the PCR Appendix filed with this Court in *Bowman v. State*, No. 2012-213468 (S.C.).

against Bowman by entering into plea agreements to reduce their charges, or sentences in exchange for their testimony against Bowman.[4] *Bowman*, 45 F.4th at 756.

At trial, the state presented evidence that Bowman had a pistol at a party on the afternoon of the murder. Later that day, according to Bowman's sister – who was also testifying pursuant to a plea agreement after being charged – and several other state witnesses, Bowman saw Martin in conversation and attempted to speak with her because she owed him money. When she rebuffed him, Bowman cursed at her and said she would be dead that night. *Id.* at 743-44.

That evening, Bowman was seen after midnight in the parking lot of a rural nightclub where Felder and others had gathered. App. 4042. Around 3:00 a.m., after all had departed from the club and returned to town, Bowman asked Felder for a ride home. App. 4043, 4045. This request came thirty minutes before Martin's burning car was discovered, but seven hours after it was first seen on the side of the road and the neighbor who ultimately discovered it first heard gunshots. When arrested, Bowman had Martin's wristwatch in the pocket of the pants he had worn the previous night. *Bowman*, 45 F.4th at 745-46.

Some days later, after Johnson told Bowman's wife that the murder weapon was stuffed in a chair in her living room, she found the weapon and gave it to Bowman's sisters who, at the direction of their father, dropped the gun from a bridge over the Edisto River. The gun was

[4] The state's deliberate efforts to coerce statements and testimony by threat of charges is exemplified by the Solicitor's notes provided in discovery in PCR that reflect "interviews needed" and explicitly notes and encourages law enforcement to threaten both of Bowman's sisters and both of Bowman's parents with "prosecution to get statement[s]." Exh. 1, Solicitor's Interviews Needed Memo.

Citations to "Exh." refer to the combined exhibits filed with this petition. Pin citations with the Exh. citations are to the internal page numbers within each exhibit. An index appears that the beginning to the combined exhibit document for the location of each exhibit.

recovered by a team of divers and the shell casings recovered at the scene matched the pistol. *Id.* at 746.

ii. *The Testimony of Gadson, Felder, and Johnson.*

Given this circumstantial evidence, the State relied heavily on the testimony of Gadson, Felder, and Johnson, its primary witnesses. According to Gadson and Felder, two weeks before the murder, Bowman purchased a Hi-Point .380 pistol. *Id.* at 743. The murder weapon was a Hi-Point .380 pistol that was recovered from the Edisto River. *Id.* at 746; App. 4307-20.

Gadson testified pursuant to a plea agreement that dismissed a murder charge—for which he could have faced the death penalty or a minimum of 30 years confinement[5]—and allowed him to plead to accessory after the fact and misprision of a felony with a negotiated sentence of 20 years. App. 3981. He provided the only purported eyewitness account of Martin's shooting and the aggravating circumstances found by the jury in sentencing: kidnapping and larceny while armed with a weapon.

Gadson offered a lurid account of Martin driving up to the outdoor party with Bowman, who told Gadson to get in the car before directing Martin to a remote rural location. Gadson claimed that once out of the car Bowman announced his intention to kill Martin "because she was wearing a wire." *Bowman*, 45 F.4th at 744. According to Gadson, Martin approached them and told Bowman she was scared. Gadson described the three hiding in the woods as a car drove by and then, as they walked back towards her car, Bowman abruptly shot at Martin five times, hitting

[5] S.C. Code § 16-3-20(A). Through his plea agreement, Gadson avoided the death penalty by testifying against Bowman. At Bowman's PCR hearing, Gadson testified that he feared the death penalty and knew that he could receive the death penalty if he did not comply with the plea agreement to testify against Bowman. Trial counsel failed to cross examine Gadson on this fact, and instead, the jury was left with the impression that Gadson was not facing the death penalty. Exh. 2, Amended PCR Appeal Petition for Writ of Certiorari (hereinafter PCR Appeal) at 19-20.

her twice. Between the shots, Gadson claimed that Martin pleaded with Bowman not to shoot her anymore because she had a child to take care of. After Martin fell to the ground, Gadson claimed Bowman dragged Martin to the woods. As they drove back to town in Martin's car, Gadson claimed Bowman bragged about shooting Martin in the head and threatened to "blow [Gadson's] brains out" if he reported what he had seen.[6] *Bowman*, 45 F.4th at 744.

As another key witness for the state, Johnson testified that he had seen Bowman with a weapon before and after the shooting. Gadson and Johnson both testified that after Martin's shooting, Bowman drove Martin's car to the nightclub and distributed gloves for them to wear while in the vehicle. Johnson said Bowman told him the car was stolen and claimed Bowman tried to sell Martin's car to people in the parking lot of the club. *Id.* at 745.

Johnson also provided the only testimony that, after leaving the nightclub, Bowman had a pistol in his lap and laughed in a chilling manner saying "I killed Kandee, heh, heh heh."[7] *Bowman*, 45 F.4th at 745. The State relied heavily on this as evidenced in its closing, which repeated the statement Johnson attributed to Bowman. The State also sought to bolster Johnson's testimony by "highlight[ing] the absence of any deal with or charges against Johnson, [and] tell[ing] the jury that he did not have 'any reason to say something [that] wasn't true.'" *Id.* at 755 (quoting App. 4474).

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[6] Despite giving several statements to police before trial, the first time Gadson claimed Bowman "threatened to blow his brains out" was during his trial testimony. Trial counsel failed to cross examine Gadson on this point. Exh. 2, PCR Appeal at 20-22.

[7] The alleged confession was not included in Johnson's pretrial written statement to police, App. 2861, but trial counsel also failed to cross examine him on that and other inconsistencies in his testimony. Exh. 2, PCR Appeal at 47.

Felder, who initially told police he knew nothing about Martin's death but later testified pursuant to a plea agreement with the State,[8] provided the only purported eyewitness testimony for the events surrounding the arson. Felder claimed that after Bowman asked him to help park Martin's car around 3:00 a.m., they drove – with Bowman driving Martin's car and Felder following in his own car – to Nursery Road where Bowman dragged Martin's body from the woods, placed it in the trunk of her car, confessed to her murder, and lit the car on fire. During the guilt phase of the trial, Felder testified that he followed Bowman straight to the place where Martin's body was, but when confronted by a security video during sentencing, he admitted that on the way out of town, Felder stopped at the EZ Horizon Store and himself purchased the gasoline that was used to set fire to Martin's car and body. *Bowman*, 45 F.4th at 745; Exh. 2, PCR Appeal, at 33, 35.

At the close of the guilt phase, the jury found Bowman guilty of murder and arson, third degree. App. 4564.

iii. *Evidence Presented at Sentencing*.

The State's evidence in sentencing added little to its trial presentation. The state incorporated the evidence from the guilt phase and introduced evidence of Bowman's prior third-degree burglary and petit larceny convictions before presenting additional postmortem photos of Martin and testimony from the pathologist who performed her autopsy as to the condition of her body, followed by pictures of her celebrating family occasions, and victim-impact testimony from her mother and father. *Bowman*, 45 F.4th at 746-47.

[8] In accord with the agreement, the State dismissed Felder's accessory after the fact of murder and arson charges—for which he could have faced up to 30 years' confinement, App. 4085-86—and allowed him to plead guilty to accessory after the fact of arson in the third degree, for which he was sentenced to three years suspended to three years' probation. App. 6424; *see also* Exh. 2, PCR Appeal at 35-37.

Bowman presented significant mitigation evidence of trauma and neglect that permeated Bowman's childhood, including witnessing his father's violence towards his mother, his father's abandonment of the family, and then the poverty of the family and daily physical abuse of Bowman's mother with switches and belts. App. 4793-94.

Bowman also became the caregiver of his family when his mother began suffering from physical ailments when Bowman was barely out of elementary school. He began cooking and caring for her and his siblings. App. 4743, 4747-48. He would help his mother out of bed, change her when she wet or soiled herself, clean her, feed her, and do for the family what she was unable to do. App. 4754, 4796-97. Sometimes Bowman stayed home from school to care for the family. App. 4797.

Bowman's mother had a relationship with a man named Joseph Sims who became like a stepfather to Bowman, but Sims was often away driving trucks for a living and permanently left the Bowmans' lives when Bowman was about seventeen. App. 4744, 4757, 4802. A social worker, Jeffrey Yungman, testified that Sims leaving was one of several traumatic events Bowman suffered as a teenager, including being hit in the head with a baseball bat, losing a cousin who died after being administered the wrong medication at a hospital, losing another cousin to suicide, and losing his maternal grandfather. App. 4801-03.[9] Yungman concluded the trauma, neglect, and other difficulties Bowman suffered weakened his decision-making ability. App. 4804-08.

The defense also called witnesses to testify about Bowman's positive behavior in pretrial detention and presented an expert in prison adjustment and future dangerousness, who testified

[9] Yungman also testified that Bowman was flagged as handicapped in school and he suffered a head injury in a car accident as a child. App. 4794-95.

that Bowman would adjust well to prison life and would never be released. *Bowman*, 45 F.4th at 746-47.

Although they did not testify in sentencing, the State relied on Gadson and Johnson as the centerpiece of its case in aggravation. Specifically, the State argued in closing, based on their testimony, that this was a "cold-blooded murder" that called for the death penalty. The prosecutor argued that Bowman "enjoyed the act" of killing Martin, which was evidenced by Gadson's testimony that Bowman asked if he "hear[d] her head hit the pavement" and Johnson's testimony that Bowman laughed while confessing he had killed her, which the prosecutor interpreted as Bowman "thought it was funny." App. 4969. When the case was submitted to the jury, the State asked the jury to find four aggravating factors: kidnapping, criminal sexual conduct, armed robbery, and larceny with a deadly weapon. App. 5018. The jury rejected criminal sexual conduct and armed robbery but recommended a sentence of death, which the court imposed. App. 5051.

b. Direct Appeal and Proportionality Review.

This Court affirmed Bowman's convictions and death sentence on direct appeal. *State v. Bowman*, 366 S.C. 485, 623 S.E.2d 378 (2005). In conducting its mandatory proportionality review, the Court found Bowman's death sentence was not disproportionate under South Carolina Code section 16-3-25(C)(3) because death sentences had been imposed in similar cases. *Id.* at 503, 623 S.E.2d at 387. The Court cited two similar cases: Jonathan Binney, who was sentenced to death for breaking into a woman's house while she was at work and shooting and robbing her once she returned, *State v. Binney*, 362 S.C. 353, 608 S.E.2d 418 (2005), and Herman Von Dohlen, who was sentenced to death for shooting and killing a woman who he said mouthed off to him at a dry cleaners and then stealing the money in the cash register, *State v. Von Dohlen*, 322 S.C. 234, 471 S.E.2d 689 (1996). Both Binney and Von Dohlen's death sentences have since been overturned by

this Court, *Binney v. State*, No. 2015-MO-028, 2015 WL 2230848 (S.C. May 13, 2015); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004), and they received life sentences following remand.[10]

c. Post-Conviction Proceedings.

In state post-conviction proceedings, Bowman alleged:

- Trial counsel were ineffective in failing to cross examine the main witnesses (Gadson, Felder, and Johnson) against him using available impeachment evidence, Exh. 2, PCR Appeal at 14-49,
- The State suppressed additional impeachment evidence that undermined Gadson and Felder's credibility in violation of *Brady v. Maryland*, *id.* at 50–60,
- Trial counsel, Marva Hardee-Thomas, had a conflict of interest because she represented Bowman and a witness who reported that Gadson—not Bowman—had confessed to killing Martin, *id.* at 61–67, and
- Trial counsel were ineffective in failing to object to evidence of favorable prison conditions presented during Bowman's sentencing hearing, *id.* at 68–80.

The circuit court denied post-conviction relief. On appeal, this Court reviewed the merits of the prison conditions evidence claim, *Bowman v. State*, 422 S.C. 19, 809 S.E.2d 232 (2018), denying certiorari on all other claims, *Bowman v. State*, Appellate Case No. 2012-213468 (Order Apr. 15, 2016).

[10] *18 former death row inmates have been resentenced since 2011. Here's Why*, The Post and Courier (Nov. 2, 2023) (available at https://www.postandcourier.com/greenville/news/south-carolina-death-row-inmates-resentenced/article_0124710a-5d44-11ee-8774-3f2433fe1479.html); *Man on death row sentenced to life*, WISTV.com (Sep. 8, 2006) (available at https://www.wistv.com/story/5381993/man-on-death-row-sentenced-to-life/).

Relevant to this petition, Bowman continued to press the claims of ineffective assistance of counsel for failure to impeach the witnesses against Bowman and the *Brady* violations in federal habeas proceedings. The district court denied relief. On appeal, the Fourth Circuit Court of Appeals declined to address the ineffective assistance of counsel claims, but did address the *Brady* claims.[11] *Bowman v. Stirling*, 45 F.4th 740 (4th Cir. 2022). The Fourth Circuit's analysis focused on the impact of the *Brady* evidence in the guilt-or-innocence phase, finding the other evidence against Bowman to be "overwhelming," *id.* at 740, while ignoring the impeaching evidence trial counsel failed to present to the jury and the inherent unreliability of incentivized testimony. Further, the Fourth Circuit found the impact the *Brady* evidence would have on sentencing was not presented to the state PCR court, which would prevent the federal court from reviewing the issue. *Id.* at 758 n.7.[12] Without any analysis specific to materiality in sentencing, the Fourth Circuit then stated, that even assuming it could consider the materiality of the *Brady* evidence to sentencing, "we reject it for the reasons already explained." *Id.* Bowman sought review in the Supreme Court of the United States, which denied certiorari. *Bowman v. Stirling*, 143 S. Ct. 2498 (2023).

d. Current Procedural Status.

More than twenty-three years after his arrest, Bowman's appeals are now exhausted. Bowman now faces execution, despite the fact that the jury never heard evidence—because it was suppressed by the State—undermining the credibility of key witnesses against Bowman. Likewise, trial counsel injected racist arguments into the trial and sentencing proceedings and made decisions based on his own racist views rather than any valid strategic consideration not to present evidence

[11] *See Bowman v. Stirling*, Case No. 20-12 (4th Cir.), Doc. 26 (Bowman's Opening Brief) & Doc. 34 (Order Granting Certificate of Appealability only on the *Brady* claim).

[12] Undersigned counsel, Ms. Vann and Ms. Norris, were appointed for the first time after the federal habeas petition was filed and the federal statute of limitations expired.

in sentencing about Bowman's on-going relationship with the Martin. This calls into question the reliability of his conviction and sentence, and allowing his execution to be carried out would be a denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice. This is especially true in light of Bowman's character development and maturity since he was sent to death row, where he has spent more than half his life.

II. THIS CASE IS APPROPRIATE FOR HABEAS CORPUS REVIEW IN THIS COURT'S ORIGINAL JURISDICTION.

Habeas corpus relief is available in this Court's original jurisdiction under the South Carolina Constitution. S.C. Const. art. I, § 18 & art. V, § 5; *see also* S.C. Code § 14-3-310 (1976). Specifically, "[n]otwithstanding the exhaustion of appellate review, including all direct appeals and PCR, habeas corpus relief remains available to prisoners in South Carolina." *Moore v. Stirling*, 436 S.C. 207, 218, 871 S.E.2d 423, 429 (2022) (quoting *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008)). Habeas relief is appropriate when other potential avenues of relief have been exhausted and there is a constitutional violation and "the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice." *Moore*, 436 S.C. at 219, 871 S.E.2d at 429; *see also Tucker v. Catoe*, 346 S.C. 483, 552 S.E.2d 712 (2001); *Slack v. State*, 311 S.C. 415, 429 S.E.2d 801 (1993); *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). As this Court recognized in *State v. Torrence*, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991), the Court's original jurisdiction gives it the "ability to provide relief to those who have, for whatever reason, been utterly failed by our criminal justice system."

Moreover, when fundamental fairness and equity demand a remedy, this Court has set aside procedural obstacles that may have prevented earlier review and proceeded directly to the merits of claims. In *Butler*, this Court concluded that the petitioner had "delay[ed] in calling this grave constitutional error to [its] attention," but nevertheless granted relief because of the "unique and

compelling circumstances" presented where the petitioner was seeking relief under constitutional principles recognized after his trial, appeal, and exhaustion of state post-conviction relief proceedings. 302 S.C. at 468, 397 S.E.2d at 88. In *Tucker*, the Court granted relief on a petition asserting a statutory claim that had never previously been presented and a constitutional claim that had been found procedurally defaulted on direct appeal and was later the subject of an unsuccessful claim of ineffective assistance of counsel. 346 S.C. at 489, 552 S.E.2d at 715.

III. REASONS THE WRIT SHOULD BE GRANTED.

a. The State Withheld Evidence Impeaching Key Witnesses Against Bowman in Violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

The state withheld three key pieces of evidence from the defense, which would have impeached the two witnesses the State presented to testify that Bowman committed the murder and the arson, third degree. The State failed to disclose (1) that it had an investigator interview Ricky Davis, who heard Gadson confess to the murder and that he had framed Bowman; (2) Gadson's mental health evaluation that revealed he heard voices, suffered from blackouts, heard beeping noises, and smoked six blunts of marijuana a day; and (3) charges pending in the same judicial circuit against Hiram Johnson at the time of his testimony against Bowman. Each of these pieces of evidence was material to the defense at both guilt and sentencing; their suppression resulted in Bowman not receiving a fair trial.

i. *Legal Standards*—Brady *and Progeny*

The Supreme Court of the United States held long ago that "[a] rule . . . declaring 'prosecutor may hide, defendant must seek' is not tenable in a system constitutionally bound to accord defendants due process." *Banks v. Dretke*, 540 U.S. 668, 696 (2004). Thus, "[t]he suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith

of the prosecution." *Brady*, 373 U.S. at 87; *see also Gibson v. State*, 334 S.C. 515, 528, 514 S.E.2d 320, 328 (1999) (holding the same). Both impeachment and exculpatory evidence is "favorable" evidence under *Brady*. *United States v. Bagley*, 473 U.S. 667, 676 (1985); *see also Giglio v. United States*, 405 U.S. 150, 154 (1972) ("When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule") (internal citations omitted); *Gibson*, 334 S.C. at 324, 514 S.E.2d. at 524 (citing *Bagley*, 473 U.S. at 676).

> A *Brady* claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.

Gibson, 334 S.C. at 324, 514 S.E.2d. at 524 (citing *Kyles v. Whitley*, 514 U.S. 419, 432-42 (1995)); *see also Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). In gauging the prejudice or materiality of the withheld evidence, "the omission must be evaluated in the context of the entire record." *United States v. Agurs*, 427 U.S. 97, 112 (1976). If the evidence of guilt is strong, regardless of whether the withheld evidence is considered, there is no materiality. *Id.* at 112-13. "On the other hand, if the verdict is already of questionable validity," the withheld evidence, even though it may seem "of relatively minor importance might be sufficient" to establish materiality. *Id.* at 113; *see also State v. Osborne*, 289 S.C. 142, 145, 147, 345 S.E.2d 256, 258-59 (Ct. App. 1986) (suppressed evidence of a primary state witness's prior inconsistent statements was material where "the verdict is already of questionable validity" and "weak"). "Even if the jury—armed with all of th[e] new evidence—*could* have voted to convict," reversal is required if the Court has "'no confidence that it would have done so.'" *Wearry v. Cain*, 577 U.S. 385, 394 (2016) (per curiam) (emphasis in original) (quoting *Smith v. Cain*, 565 U.S. 73, 76 (2012)).

The Supreme Court has explicitly held that application of the "materiality" standard requires a court to consider the "net effect" of the evidence withheld by the prosecution. *Kyles,* 514 U.S. at 421-22. This Court has also recognized its duty to consider "the collective impact" of the suppression of evidence when there is more than one piece of evidence withheld by the State. *Riddle v. Ozmint*, 369 S.C. 39, 46, 631 S.E.2d 70, 74 (2006) (per curiam). This is particularly important where the state seeks the death penalty "[b]ecause 'our duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.'" *Kyles,* 514 U.S. at 422 (quoting *Burger v. Kemp*, 483 U.S. 776, 785 (1987)).

In *Kyles,* the Court emphasized "[f]our aspects of materiality under *Bagley*." 514 U.S. at 434. First:

> [A] showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. . . . *Bagley*'s touchstone of materiality is a "reasonable probability" of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial."

Id. (quoting *Bagley,* 473 U.S. at 678).

Second:

> [M]ateriality . . . is not a sufficiency of evidence test. A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict. One does not show a *Brady* violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

Id. at 434-35.

Third, "once a reviewing court applying *Bagley* has found constitutional error there is no need for further harmless-error review." *Id.* at 435.

"The fourth and final aspect of *Bagley* materiality" emphasized in *Kyles* is that "suppressed evidence" must be "considered collectively, not item by item." *Id.* at 436; *see also Wearry*, 577 U.S. at 394; *Riddle*, 369 S.C. at 46, 631 S.E.2d at 74.

In applying this analysis and finding "materiality" in *Kyles*, the Court observed:

> [T]he question is not whether the State would have had a case to go to the jury if it had disclosed the favorable evidence, but whether we can be confident that the jury's verdict would have been the same. Confidence that it would have been cannot survive a recap of the suppressed evidence and its significance for the prosecution.

514 U.S. at 453.

ii. *Withholding of the Sam Memo Violated* Brady.

In PCR proceedings, Bowman's counsel obtained the prosecutor's file and found notes written by an investigator from the solicitor's office, Sam Richardson, recounting a pretrial interview he conducted in which Ricky Davis told him that Tawain Gadson confessed to shooting Martin. At the time, Davis was housed at the Dorchester County Detention Center with Gadson. App. 5978. This memo, called "the Sam Memo," was not turned over to Bowman's counsel prior to trial. Instead, in advance of trial, Bowman's counsel was given only a handwritten note from Davis with the barebones assertion that Gadson "said that he was the one that shot the girl."[13]

[13] The full note stated:

> Augest 6
>
> I Rickie Davis was on A side with Gadson and he said that he was the one that shot the girl and gave Bowman back the gun that was used and He said that it didn't matter because Blak famile had got caught with the gun. He also that the police all he got to do is say Blak did it.
>
> Rick Davis

App. 8966 (errors in original).

The text of the Sam Memo confirmed Gadson's confession to Davis and provided additional details about the circumstances of the confession:

> Ricky Davis Interview
>
> Conducted by Sam at Lieber Correctional Institution.
>
> Ricky Davis states that he and James Taiwan [sic]Gadson along with 4 or 5 others were sitting at a table on the A-side. Gadson was talking to the group when he said something about killing a girl. He stated that they were going to rob someone. They thought she was wired and he shot her in the head with a .380.
>
> This conversation occurred about three weeks before he wrote the letter. (August 6, 2001).
>
> Afterwards, Davis was playing chess with Marion Bowman in cell 8. Davis told Marion Bowman about the conversation he had with James Gadson. Bowman said "if you heard all this, write it down." Bowman showed him a picture of the dead girl. He also showed him a file from his attorney.
>
> Bowman said he had been smoking dope that day. He said it was him, James Gadson and the girl at the scene. The girl was supposed to help them rob a house to get drugs and money. Bowman knew the intended victim.
>
> Bowman never admitted he shot anyone.
>
> Subsequent to this, Davis talked to James Gadson again. At this time, Gadson said that Bowman shot her.

App. 9122.

The prosecution's failure to turn over the Sam Memo violated *Brady*. There is no disputing that the Sam Memo was in the possession of the prosecution—Richardson was an investigator for the solicitor's office and provided the memo to the lead prosecutor in the case, *See* App. 6773, 7752, who failed to disclose the Sam Memo to defense counsel. Similarly, the memo was clearly favorable to Bowman as it indicated another person confessed to murdering Martin.

The State suppressed the Sam Memo by failing to provide it to defense counsel despite its duty to disclose impeachment evidence. *See Bagley*, 473 U.S. at 676. The handwritten note from

Davis given to trial counsel did not relieve the State of its burden to turn over the Sam Memo because Davis's note was not equivalent in form or substance. The Sam Memo would have held significant evidentiary weight to a juror. It was an official investigative memorandum documenting a co-defendant, who by his own admission was present at the crime scene, confessing to a group of people. One person in the group was confident enough in this confession to repeat it to a law enforcement officer, who then reported it to members of the prosecution team. The memorandum would have provided ample grounds for cross-examination of Davis and Gadson and for trial counsel to call Richardson as a witness to rebut Davis or Gadson if they denied Gadson's confession.

Davis's handwritten note did not suffice because it was less credible than a law enforcement interview with resulting work product and it failed to provide defense counsel with all the favorable information included in the Sam Memo. The handwritten note alone does not allow the defense to *effectively* cross examine Davis or Gadson or to confront their testimony by calling Richardson as a witness. Nor did (or could) it allow for further investigation into the additional details provided in the memorandum, such as the other people who heard Gadson's confession referenced in the Sam Memo but not the handwritten note. The Sam Memo is a valuable piece of impeachment evidence—above and beyond the handwritten note—that strengthens Bowman's case.

Finally, the Sam Memo was material. The Sam Memo recounts a co-defendant confessing to the crime for which Bowman was facing the death penalty, and provided evidentiary support to bolster that confession. It is hard to think of anything more material to guilt-or-innocence than another person confessing to the crime. Here, where the state's case was built largely on Gadson's testimony that he was at the crime scene and witnessed Bowman shoot the victim, impeaching

evidence that Gadson himself confessed to killing Martin would undermine Gadson's credibility and attempts to place the blame on Bowman. *See State v. Brown*, 441 S.C. 464, 470, 894 S.E.2d 525, 528 (2023) ("[A] key witness's reliability is always material."). This is especially true because Gadson, himself, was also initially charged with the murder and only avoided a murder charge and possible death sentence by agreeing to testify against Bowman. *Id.* at 473, 894 S.E.2d at 529 ("[T]he [*Brady*] analysis must focus on a witness's bias when he or she has a 'personal stake' in the conviction."). Had trial counsel been able to use the Sam memo, there is a reasonable probability that the result of trial would have been different.[14] *See Wearry*, 577 U.S. at 393 (finding evidence to be material when it "[p]erhaps" would have made the difference between the defendant being charged with capital murder and as an accessory after the fact).

iii. *Withholding of Gadson's Mental Health Records Violated* Brady.

In addition to withholding evidence that Gadson confessed to the murder, the State also withheld a report of Gadson's mental health evaluation in which he was diagnosed with cannabis dependence and a seizure disorder. App. 7377, 7851, 8957-61. The report details Gadson telling the doctors that he suffered from blackouts, and his tests showed memory problems. App. 8959-60. The report also reveals "he hears a voice and 'a little beeping noise.'" App. 8960.

[14] Though the PCR court addressed this claim, it incorrectly found the evidence was not material because Davis threatened to recant his statement regarding Gadson's confession. Davis's recantation would not render the Sam Memo immaterial: a second statement to law enforcement that Gadson had confessed to the murder would surely affect the way the jury perceived the strength of the State's case and would undermine star witness Gadson's credibility. *See Chambers v. Mississippi*, 410 U.S. 284 (1973) (holding that a defendant had a due process right to present the testimony of three people to whom a third party confessed to the murder before recanting his statements). Any confidence that Davis would not have been a helpful witness for Bowman is further undermined by the fact that Davis was represented by one of Bowman's trial attorneys, Marva Hardee-Thomas. While still counsel for Davis, Hardee-Thomas decided not to call Davis as a witness in Bowman's capital murder trial. With these divided loyalties, trial counsel's decision not to call Davis cannot be counted against Bowman. Exh. 2, PCR Appeal, at 61-67; *see also* Exh. 16, Jim Brown Affidavit.

The State was in possession of this report as part of its prosecution of Gadson, but never turned it over to the defense during trial. App. 7377, 7851. The report was favorable to Bowman because it could have been used to impeach Gadson, as the solicitor acknowledged during PCR proceedings. App. 7852. Because the impeachment evidence would undermine the credibility of the sole, alleged, eyewitness to the murder, the evidence is material to Bowman's trial. *See Brown*, 441 S.C. at 470, 894 S.E.2d at 528 ("[A] key witness's reliability is always material.").[15] Though the PCR and federal habeas courts found there was no *Brady* violation in regards to Gadson's mental health records, they made this finding based on the fundamentally flawed determination that the mental health records were not suppressed because defense counsel could have obtained the records from Gadson's file themselves. *See, e.g.*, *Bowman*, 2020 WL 1466005, at *18. Reliance on a due diligence exception to the due process requirement found in *Brady* is clearly erroneous. As this Court noted in *Riddle*, "that is not what *Brady* requires. The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching." 369 S.C. at 44, 631 S.E.2d at 73. Likewise, the Supreme Court clearly rejected a due diligence exception in *Banks*, when it expressly stated the duty to disclose favorable, material information under *Brady* is "absolute" and "does not

[15] This case is analogous to the case of *Glossip v. Oklahoma*, No. 22-7466, *cert. granted*, 144 S.Ct. 691 (U.S. Jan. 22, 2024) (argued Oct. 9, 2024), which is currently pending decision by the United States Supreme Court. The similarity is that the state's primary witness, Sneed, committed the murder but – in order to avoid a death sentence – plead guilty, implicated Glossip as the person that planned the murder, and testified against him. Years later, the state disclosed that Sneed, a known methamphetamine addict, was evaluated by a psychiatrist after his arrest. The psychiatrist prescribed lithium for his untreated bipolar disorder. The State also permitted Sneed to testify falsely that he had never seen a psychiatrist. Additional evidence withheld by the state established that the prosecutor worked with Sneed's attorney to alter his testimony to better align with the other evidence in the case and then lied to the court by denying knowledge that Sneed would change his story in order to avoid a mistrial. Brief for Petitioner at 1-2. Unlike in this case, however, the State of Oklahoma conceded in the Oklahoma Supreme Court that Glossip's convictions should be set aside. Oklahoma has also argued in the United States Supreme Court that the Oklahoma Court's denial of relief for Glossip must be vacated. Brief of Respondent in Support of Petitioner at 1-3.

depend on defense counsel's actions." 540 U.S. at 696 ("A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process."); *see also Walker v. Kelley*, 195 F. App'x 169, 175 (4th Cir. 2006) (unpublished) (discussing the "well-settled law that the prosecutor had a duty to disclose *Brady* material" and holding that the *Brady* "analysis focuses on prosecutorial misconduct, not on the defendant's diligence").

Even if there were a due diligence requirement—and *Riddle* and *Banks* made clear there is not—it was unreasonable to invoke it on these facts because Bowman's trial counsel did not have knowledge of, or a realistic means to, obtain Gadson's mental health records.[16] Bowman's attorneys were unaware of Gadson's mental health evaluation to begin with, much less the contents of the report and how it could have benefitted their client's case. App. 7377. Moreover, this mental health evaluation was not in a public record and could not have been obtained by subpoena as it was the protected mental health information of a codefendant. *Cf. Chavis v. North Carolina*, 637 F.2d 213 (4th Cir. 1980) ("[A] court-ordered report as to the mental capacity of an accused does not become a public record"). Thus, this record clearly was not "available" to Bowman. It was, however, available and known to the prosecutor, who failed to turn it over even though he maintained, before, during, and after trial, that he had an open file policy for everything except his

[16] The facts here are distinguishable from Fourth Circuit cases where counsel failed to "search" for evidence already personally known by the defendant or failed to discover public and "publicly available" evidence. For example, in *Fullwood v. Lee*, 290 F.3d 663 (4th Cir. 2002), and *United States v. Catone*, 769 F.3d 866 (4th Cir. 2014), the alleged suppressed evidence was already known by the defendant, as it was his own drug use, *Fullwood*, 290 F.3d at 686, and his own tax forms, *Catone*, 769 F.3d at 872. In *United States v. Higgs*, 663 F.3d 726, 735 (4th Cir. 2011), the ballistics report requested by the defense was "in the public domain" at the time of trial because it had been "widely admitted into evidence in various courts.". In *United States v. Fagot-Maximo*, 795 F. App'x 213, 215 (4th Cir. 2020), the defense claimed that a letter describing jail calls of a third party was suppressed evidence, yet the defense was provided with the opportunity to listen to and make recordings of those same jail calls.

notes and impressions. App. 78, 118, 3793, 7862, 9426; *see Strickler*, 527 U.S. at 283 n. 23 ("[I]f a prosecutor asserts that he complies with *Brady* through an open file policy, defense counsel may reasonably rely on that file to contain all materials the State is constitutionally obligated to disclose under Brady."). "Even had a true 'open file' policy existed, the existence of such a policy does not negate the solicitor's *Brady* obligation." *Riddle*, 369 S.C. at 46-47, 631 S.E.2d at 74; *Banks*, 540 U.S. at 695 ("Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed.").

By applying the wrong standard to this impeaching evidence—of a witness already testifying to avoid a murder conviction and the death penalty and who, according to additional *Brady* evidence, confessed to committing the murder himself—the courts have left intact Bowman's murder conviction and death sentence where the jury did not have the full picture of the unreliability of the State's main witness and the only alleged eyewitness to the murder. Because the State is at fault for not turning over this evidence, Bowman's conviction is unreliable and should be reversed.

iv. *Withholding of Johnson's Criminal Charges Violated* Brady.

The State also suppressed evidence that witness Hiram Johnson, who testified that Bowman confessed to the murder, had prior unindicted charges for receiving stolen goods, second degree burglary, and grand larceny—all charges that were later dropped by the same office that prosecuted Bowman. App. 9129-35. Trial counsel was not aware of this information. App. 7100-01.

The solicitor also acknowledged that the pending charges had not been disclosed to the defense team since the pending charges were not on Johnson's rap sheet. App. 9228-31. The solicitor admitted this evidence would be relevant to Johnson's bias. App. 7832. Defense counsel agreed the pending charge could have been used to impeach Johnson for bias, App. 7103, and

testified he would have asked questions about Johnson's pending charges had he known about them. App. 7106-07. Defense counsel agreed that Johnson needed to be impeached because he claimed he heard Bowman confess to the killing and laugh about it. App. 7114.

From this testimony, it is clear that the State was in possession of the information about Johnson's pending charges, failed to turn that information over to defense counsel, and that it would have been favorable to Bowman as impeachment evidence against Johnson.[17] The prior courts to review this claim erred in finding the evidence was not material. Though there was no formal agreement between the prosecution and Johnson, this does not mean that there was no possibility of reward for Johnson's testimony. To the contrary, the "*possibility* of a reward" is an *even stronger* "incentive to testify" in a manner pleasing to the prosecutor than a known "*promise* or binding contract." *Bagley*, 473 U.S. at 683 (emphases added); *see also Boone v. Paderick*, 541 F.2d 447, 451 (4th Cir. 1976) (a promise without assurance may be interpreted as contingent "upon the quality of the evidence produced," increasing "the incentive to make the testimony pleasing to the promisor"). Consistent with *Bagley*, this Court recognized that a promise of a "possibility" of reward in exchange for testimony gives the "witness a personal stake in the defendant's conviction" and "incentive to testify falsely." *Brown*, 441 S.C. at 472, 894 S.E.2d at 529. This is so even where "the witnesses were not given firm promises or deals; rather, a mere possibility of favorable treatment was sufficient." *Id.* In short, "a formal agreement is not always necessary to warrant disclosure," *id.*, as a key focus of *Brady* and its progeny is "the disclosure of incentives to

[17] A witness in a South Carolina criminal trial may be impeached with evidence of pending criminal charges and the potential sentence faced in order to show "[b]ias, prejudice or any motive to misrepresent" per S.C.R.E. Rule 608(c). *See State v. Sims*, 348 S.C. 16, 26-27, 558 S.E.2d 518, 522-23 (2002); *State v. Mizzell*, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002) ("The lack of a negotiated plea, if anything," makes a witness with pending charges "more likely to engage in biased testimony in order to obtain a future recommendation for leniency.").

give biased testimony," *Id.* at 475, 894 S.E.2d at 530; *see also State v. Mizzell*, 349 S.C. at 333, 563 S.E.2d at 318 ("The lack of a negotiated plea, if anything," makes a witness with pending charges "more likely to engage in biased testimony in order to obtain a future recommendation for leniency.")

Thus, it is reasonable to believe that a witness such as Johnson would "have felt that the quality of his cooperation would determine the degree of benefit he would later receive." *Mizzell*, 349 S.C. at 333, 563 S.E.2d at 318. Johnson supported the prosecution's theory of the case (and shifted suspicion away from his cousin Gadson), and all pending charges against Johnson in Orangeburg were ultimately dropped by the same office that prosecuted Bowman. App. 6276-77.

The charges against Johnson were particularly crucial impeachment information because of the weight the State put on Johnson's testimony, despite even law enforcement's concern that Johnson had "competency" issues. App. 8200. Taking full advantage of this informational void surrounding Johnson's charges, the solicitor told the jury that it could trust Johnson because they "hadn't heard any testimony about Hiram Johnson having any kind of charge against him or any kind of a deal with the state, any reason to say something wasn't true." App. 4474. This deliberately misleading statement bolstered Johnson's testimony and demonstrates the materiality of these unindicted charges and how they could have been used to undermine Johnson's credibility.[18] *See Brown*, 441 S.C. at 476, 894 S.E.2d at 531 (finding *Brady* materiality where "[Witness] Evans had a personal stake in Brown's conviction . . . when he anticipated leniency on the part of the State and his charges were actually reduced to nonviolent offenses"). Johnson's testimony that Bowman

[18] This is further evidenced by the fact that Johnson failed to tell the police of Bowman's alleged "confession" during his pretrial interviews and making of a written statement. Thus, Johnson's testimony against Bowman became more favorable to the State as trial approached and while charges were pending against him by the solicitor's office. Exh. 2, PCR Appeal, at 47.

confessed to the killing while laughing was indisputably damaging to the defense's case, and thus information undermining Johnson's credibility—i.e., that the prosecution had pending charges hanging over his head—is precisely the type of information courts have deemed material. *See Giglio*, 405 U.S. at 154; *Brown*, 441 S.C. at 476, 894 S.E.2d at 531; *Reutter v. Solem*, 888 F.2d 578, 580-82 (8th Cir. 1989) (finding a *Brady* violation where prosecutors failed to disclose that key witness had pending petition for commutation of his sentence).

v. *The Impact of the Multiple Undisclosed Impeachment Materials Must Be Considered Cumulatively, Demonstrating Materiality Under* Brady.

Courts addressing multiple pieces of undisclosed evidence must consider their materiality cumulatively. *Kyles*, 514 U.S. at 436-37. In other words, this Court must consider "the collective impact" of the withheld evidence. *Riddle*, 369 S.C. at 46, 631 S.E.2d at 74. Viewed through the correct legal lens, no confidence can be had that the verdict was reliable. The State suppressed the fact that its star witness had confessed to the murder and suffered blackouts, had memory problems, and heard voices and beeping noises. The State further suppressed the fact that another key witness—who the solicitor told the jury had no pending charges—was, in fact, being prosecuted by his office. Overall, the evidence shows a pattern of withholding favorable evidence, threatening witnesses, and claiming that it did not know about the untruths in its primary witnesses' testimonies. In a capital case, which demands heightened reliability, it would be shocking to the universal sense of justice to maintain a conviction in these circumstances. The Court should instead enforce the *Brady* rule in this case, which "will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations." *Kyles*, 514 U.S. at 440.

vi. *The Evidence Withheld by the State was Material to the Jury's Sentencing Decision and Warrants Remand for Resentencing*.

Even if the withheld evidence impeaching Gadson and Johnson would not undermine the jury's finding of guilt, the evidence is material to sentencing. The *Brady* materiality analysis is different in the sentencing phase of a capital trial, where the focus is not simply on whether the State has proven guilt or a statutory aggravating circumstance but on the appropriate sentence considering all aggravating and mitigating evidence.

> When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt. When a defendant challenges a death sentence such as the one at issue in this case, the question is whether there is a reasonable probability that, absent the errors, the sentencer – including an appellate court, to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.

Strickland v. Washington, 466 U.S. 668, 695 (1984).[19] A court makes a fundamental error in failing to "distinguish[] the materiality of the suppressed evidence with respect to [a defendant's] guilt from the materiality of the evidence with respect to his punishment." *Cone v. Bell*, 556 U.S. 449, 452 (2009).

In making the materiality determination in sentencing, the court must evaluate the "totality of the available . . . evidence – both that adduced at trial, and . . . in the habeas proceedings." *Williams v. Taylor*, 529 U.S. 362, 398 (2000). Suppressed evidence can be material to sentencing "even if it does not undermine or rebut the prosecution's death-eligibility case." *Id.* Materiality in the capital sentencing context is expressed as "a reasonable probability that at least one juror would have struck a difference balance." *Wiggins v. Smith*, 539 U.S. 510, 537 (2003); *Cone*, 556 U.S. at 452 (court must determine "whether there is a reasonable probability that the withheld evidence

[19] The Court applies this same test for determining "materiality" in the *Brady* context and "prejudice" in the context of claims of the denial of the effective assistance of counsel under the Sixth Amendment. *Strickland*, 466 U.S. at 694.

would have altered at least one juror's assessment of the appropriate penalty"). Alternatively, as the Court described the prejudice analysis in *Rompilla v. Beard*, 545 U.S. 374 (2005):

> [T]he undiscovered "mitigating evidence, taken as a whole, 'might well have influenced the jury's appraisal' of [Rompilla's] culpability," *Wiggins v. Smith*, 539 U.S., at 538 (quoting *Williams v. Taylor*, 529 U.S., at 398, 120 S.Ct. 1495), and the likelihood of a different result if the evidence had gone in is "sufficient to undermine confidence in the outcome" actually reached at sentencing, *Strickland*, 466 U.S., at 694.

Id. at 393 (cleaned up).

The sentencing phase of a capital trial focuses on "the particularized consideration of relevant aspects of the character and record" of the individual defendant and the circumstances of the offense. *Woodson*, 428 U.S. at 303. In South Carolina, the death penalty is *never* required, regardless of the weight or even lack of mitigating circumstances. *See State v. Jenkins*, 436 S.C. 362, 872 S.E.2d 620 (2022) (permitting defense counsel to inform potential jurors in voir dire that "you are never required to vote for the death penalty"); *Williams v. Ozmint*, 380 S.C. 473, 479, 671 S.E.2d 600, 603 (2008) (trial court instructing the jury "you are never required to recommend the death penalty"). Instead, the jury is always permitted to give a "reasoned moral response," in light of the evidence before it. *Brewer v. Quarterman*, 550 U.S. 286, 289 (2007) ("[W]e have long recognized that a sentencing jury must be able to give a 'reasoned moral response' to a defendant's mitigating evidence—particularly that evidence which tends to diminish his culpability—when deciding whether to sentence him to death). A capital sentencing jury in South Carolina is appropriately instructed in a capital sentencing phase "that it may recommend a life sentence for any reason or no reason at all, including as an act of mercy." *Rosemond v. Catoe*, 383 S.C. 320, 330, 680 S.E.2d 5, 10 (2009); *State v. Atkins*, 303 S.C. 214, 221, 399 S.E.2d 760, 764 (1990). They

need not weigh the mitigating factors against the aggravating factors; they are instructed simply to "consider" them. *State v. Bellamy*, 293 S.C. 103, 107, 359 S.E.2d 63, 65 (1987)

Bowman's jury was charged in accordance with these precepts. App. 5020-21; App. 5030-31. Thus, prior judicial findings that the *Brady* evidence was not material at the guilt phase because the evidence of Bowman's *guilt* was "overwhelming" in no way addresses whether that evidence created "a reasonable probability that at least one juror would have struck a difference balance" as to *sentence*. *Wiggins*, 539 U.S. at 537; *see also Williams*, 529 U.S. at 398 ("Mitigating evidence unrelated to dangerousness may alter the jury's selection of penalty, even if it does not undermine or rebut the prosecution's death-eligibility case.").

That is particularly true here, where the State offered little in aggravation save evidence of guilt dependent on dubious witnesses. The State presented evidence of non-violent prior offenses for which Bowman was given youthful offender sentences, App. 4960, "photographs of the victim's burned body and a pathologist's testimony about the autopsy," and victim impact evidence. *Bowman*, 45 F.4th at 747. Relying only on the guilt-innocence phase evidence, the jury found two aggravating circumstances (kidnapping and larceny with the use of a deadly weapon) and rejected two others (criminal sexual conduct and armed robbery). App. 5021-22, 5051. And, when arguing for death, the State relied once again on the testimony of *Gadson and Johnson*, whose impeachment material it suppressed. The Solicitor highlighted Gadson's claim that the victim "begged for her life" while "she was thinking about her baby" in her last moments. App. 4954. His testimony was also the sole evidence of the statutory aggravating circumstances found by the jury. App. 4958. Similarly, the solicitor's arguments that this was a "cold-blooded murder" that Bowman "enjoyed" relied on Gadson's testimony that Bowman had asked Gadson if he heard "her head hit the pavement" and Johnson's testimony that Bowman laughed about the murder

because "[h]e thought it was funny." App. 4969; *see also* App. 4974 ("he laughed about it"). The centrality of these compromised witnesses to the State's case for death cannot be ignored. *Kyles*, 514 U.S. at 444 (the likely materiality or "damage" of withholding impeachment evidence "is best understood by taking the word of the prosecutor" in his closing argument); *Monroe v. Angelone*, 323 F.2d 286, 314 (4th Cir. 2003) (considering, in determining materiality, the prosecution's closing argument emphasizing witness testimony that *Brady* evidence would have undermined); *see also Strickler v. Greene*, 527 U.S. 263, 295 (1999) (finding impeachment evidence was not material where the witness's testimony "was not relied upon by the prosecution at all during its closing argument at the penalty phase").

Because the suppressed impeachment evidence went directly to the individuals forming the basis of the State's case in the trial and the aggravating circumstances in sentencing, there is a reasonable probability the impeachment evidence would have convinced at least one juror vote for a life without parole sentence instead of death, even if they found there was sufficient evidence to find guilt beyond a reasonable doubt.[20] *Wiggins*, 539 U.S. at 537. With knowledge of the impeachment evidence withheld by the State, a reasonable juror would have harbored enough lingering doubt as to Bowman's guilt and relative culpability to reject a death sentence. Indeed, in a study based on interviews of former South Carolina capital jurors, the Capital Jury Project found that "'[r]esidual doubt' over the defendant's guilt is the most powerful 'mitigating' fact[or]," Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What do Jurors Think?*, 98 Colum. L. Rev. 1538, 1563 (1998), with 77.2% of jurors stating they would be less likely to impose a death sentence in the face of residual doubt of guilt or relative culpability, *id.* at 1559.

[20] The Solicitor was even willing to enter a plea agreement with Bowman for a life sentence and made this offer seven times prior to trial, App. 7033, 7505, including once on the record in a pretrial motions hearing, App. 11.

Impeachment evidence and evidence pointing to another trigger person is especially powerful when each juror explicitly has the option of rejecting a death sentence "for any reason or no reason at all" on a death-eligible defendant. *Atkins*, 303 S.C. at 221, 399 S.E.2d at 764. The materiality in sentencing has never been considered by this Court and this Court should do so now to ensure reliability in South Carolina's death sentencing system. [21]

b. Lead Trial Counsel Provided Ineffective Assistance of Counsel By Injecting Odious Racial Prejudice Into Bowman's Capital Trial And Sentencing Proceedings.

Bowman's convictions and death sentence must be vacated under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3, 14, and 15 of the South Carolina Constitution due to the ineffective assistance of counsel inherent in trial counsel's insistence that Bowman plead guilty despite maintaining his innocence and counsel's racist arguments that injected odious racial prejudice into the case, as well as counsel's failure to make adequate, truthful, mitigating arguments on Bowman's behalf because counsel was infected by his own racism to the extent that he did not believe his black client and did not want to present credible evidence of Martin's drug addiction, history of pawning personal items for drugs, and

[21] The question of materiality to sentence was not presented to the PCR or federal district courts. When it was raised in the Fourth Circuit on appeal of federal habeas, the court failed to distinguish between the analysis for materiality in guilt and in sentencing, stating in a footnote only that: "Even assuming we may consider this [procedurally defaulted] argument, we reject it for the reasons already explained." *Bowman*, 45 F.4th at 758 n. 7. As noted, Bowman's current counsel were not appointed to represent him in PCR proceedings or in the filing of his federal habeas petition. Raising an issue for the first time in this Court's original jurisdiction after all other avenues have been exhausted is not, however, an impediment to this Court's jurisdiction and ability to grant relief. *Butler*, 302 S.C. at 468, 397 S.E.2d at 88 (granting relief on a "grave constitutional error" first asserted in original jurisdiction); *Tucker*, 346 S.C. at 489, 552 S.E.2d at 715 (granting review of a statutory claim that had never previously been presented and a constitutional claim that had been found procedurally defaulted on direct appeal and was later the subject of an unsuccessful claim of ineffective assistance of counsel in state and federal courts and granting relief based on the latter claim).

prostituting for drugs that counsel viewed as degrading and slandering the "little white girl" victim or pitting the white girl against the "black man" accused of killing her.

The United States Supreme Court has repeatedly emphasized the fundamental role of counsel in ensuring a defendant a fair trial. *See, e.g., Gideon v. Wainwright*, 372 U.S. 335, 343-44 (1963). Counsel, the Court has stated, is the means through which all other rights of the person on trial are secured. *United States v. Cronic*, 466 U.S. 648, 653 (1984); *see also United States v. Ash*, 413 U.S. 300, 307 (1973) (counsel serves as a "guide through complex legal technicalities"). This core component of our adversary system is meaningless, however, if counsel performs incompetently. Thus, the Court has held that the right to counsel necessarily encompasses "the right to the effective assistance of counsel." *Strickland*, 466 U.S. at 686 (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.*

In determining whether trial counsel provided ineffective assistance of counsel, pursuant to the Sixth and Fourteenth Amendments, the courts must apply the standards set forth in *Strickland*. The *Strickland* standard is satisfied if a petitioner establishes both that his attorney's representation "fell below an objective standard of reasonableness," *id.* at 688, and that the petitioner was "prejudiced" by his attorney's substandard performance, *id.* at 692. *See also Williams v. Taylor*, 529 U.S. 362 (2000); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Porter v. McCollum*, 558 U.S. 30 (2009) (per curiam); *Sears v. Upton*, 561 U.S. 945 (2010) (per curiam); *Hinton v. Alabama*, 571 U.S. 263, 274 (2014) (per curiam); *Buck v. Davis*, 580 U.S. 100 (2017); *Andrus v. Texas*, 590 U.S. 806 (2020) (per curiam). The *Strickland* "standard is necessarily a general one," *Bobby v. Van Hook*, 558 U.S. 4, 7 (2009) (per

curiam), that requires a case-by-case examination of the facts, *Williams*, 529 U.S. at 391. At minimum, however, counsel has a duty to conduct an "independent examination of the facts, circumstances, pleadings and laws involved." *Strickland*, 466 U.S. at 693.

In advance of trial, the solicitor made multiple offers to allow Bowman to receive a life sentence in this case in exchange for Bowman's guilty plea. App. 11, 7033, 7505. Bowman's lead counsel was well-known for routinely trying to convince clients to plead guilty in criminal cases or settle in family court cases even when they had a triable case. Exh. 3, Investigator Robert Minter Affidavit. And, true to form, Bowman's counsel in this case focused the bulk of their energies on trying to force a plea from Bowman from their first meetings up until the time of trial.[22] Indeed, Bowman informed the trial court early in his case that counsel was advising him to plead guilty, even without significant aspects of discovery, because Bowman was black, and Martin was white, and white jurors would convict him solely based on the differences in their race as a matter of racial prejudice. Exh. 5, Undated Letter to Judge Goodstein.

Specifically, in a letter sent to trial judge Diane S. Goodstein, Bowman, who was only 20 years old at the time of his arrest, wrote:

> Dear Honorable Judge Goodstein:
>
> > I Marion Bowman Jr. am well aware of the offer Mr. Bailey has gave me. However, I'm so confused I don't what to do. Mr. Bailey is offering me a plea bargain of life without the possibility of parole, but is still giving me information concerning the case. And the fact that is an substantial amount of discovery I do not have it is very difficult to understand what is going on. My attorney is trying to convince me to accept this plea because he said and I quote "These white jurors whose skin is whiter than his is going to see a Black male verses, a white female victim, are going to convict me because of my skin color, and not based upon evidence."

[22] Although he was a very experienced investigator retained by counsel, Minter was never given any direction or "investigative tasks" on the case. Exh. 4, Robert Minter 2018 Affidavit. He was so underutilized that he did not recall meeting with Bowman or any fact witnesses. *Id.* Instead, he was tasked with "meet[ing] with Marion's mom about a plea offer." *Id.*

Id. (Errors in Original). Then on November 5, 2001, he again wrote to Judge Goodstein literally alerting her to his fear for his life, in part, because the witness statements kept expanding well after Bowman's arrest, as well as mentioning again that he was unwilling to plead guilty, even in exchange for a life sentence:

> Dear Judge Goodstein: Nov. 5, 2001
>
> I Marion Bowman Jr am writing to ask you may I see you while you are here in Dorchester County. Reason for this meeting is that I'm scared for my life and I'm aware of the offer Mr. Bailey has offered, which I refused to accept. I understand that Mr. Bailey has all of his facts to try this case, so I would like to request a evidential hearing AS SOON AS POSSIBLE, because the police getting people to change or add things to their statements months later.

Exh. 6, Letter to Judge Goodstein (Nov. 5, 2001). Judge Goodstein responded by informing Bowman that his counsel could request a hearing on the issue, which never happened. Exh. 7, Goodstein Response Letter. He also wrote to the Governor and the South Carolina Bar seeking assistance. Exh. 8, Governor & Bar Letters.

Despite Bowman's pleas for assistance, his case rolled on without the court addressing his concerns. And rather than attacking the State's case adequately during trial, his counsel provided minimal assistance. Specifically:

1) Counsel failed to adequately cross-examine Taiwan [sic] Gadson with available information that the state threatened Gadson with the death penalty in his plea agreement, Gadson made a number of prior inconsistent statements, and Gadson had access to the murder weapon.

2) Counsel failed to adequately cross-examine Travis Felder with a videotape that would have shown Felder lied to the jury during trial as he bought the gas to burn the decedent's car.

3) Counsel failed to adequately cross-examine Hiram Johnson about his prior inconsistent statement which, critically, did not include his allegation at trial that Bowman confessed to the murder.

4) Public defender counsel had a conflict of interest between two of her clients – Bowman and Ricky Davis – that caused counsel to fail to call Ricky Davis as a witness, despite

> Davis's statement that Gadson confessed he was the actual murderer rather than Bowman.

Exh. 2, PCR Appeal.

While Bowman will not repeat these arguments,[23] Bowman revisits these issues and incorporates them by reference because lead counsel's performance, which even his one testifying defense expert in sentencing rates as the worst performance by capital defense counsel in all of the 29-30 capital cases he's participated in, Exh. 9, Jeffrey Yungman, M.S.W., J.D., 2024 Affidavit,[24]

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[23] The arguments were previously denied review by this Court and the United States Court of Appeals for the Fourth Circuit. This Court should be mindful, however, that the standards of review in federal habeas corpus proceedings under the Antiterrorism and Effective Death Penalty Act ("AEDPA") are far more stringent than this Court's standards on PCR appeal simply applying *Strickland* and its progeny. Specifically, under 28 U.S.C. § 2254, "[j]udicial review of a defense attorney's" conduct "is highly deferential – and doubly deferential when it is conducted through the lens of federal habeas," which requires a showing that the state court judgment is "not only erroneous, but objectively unreasonable." *Yarborough v. Gentry*, 540 U.S. 1, 5-6 (2003) (per curiam). The "doubly deferential" review means (1) there is a "highly deferential" look at counsel's performance; and (2) this must be done through the "deferential lens of § 2254(d)." *Cullen v. Pinholster*, 563 U.S. 170, 190 (2011). *See also Burt v. Titlow*, 571 U.S. 12, 15 (2013) (The "'doubly deferential' standard of review . . . gives both the state court and the defense attorney the benefit of the doubt.")

> Federal courts may not disturb the judgments of state courts unless "each ground supporting the state court decision is examined and found to be unreasonable." *Wetzel v. Lambert*, 565 U.S. 520, 525 (per curiam). Thus, if a fairminded jurist could agree with either [the state court's] deficiency or prejudice holding, the reasonableness of the other is "beside the point." *Id.* at 524.

Shinn v. Kayer, 592 U.S. 111, 120 (2020) (cleaned up). Under AEDPA, "the only question that matters" is whether the state court's adjudication was "so obviously wrong as to be 'beyond any possibility for fairminded disagreement.'" *Id.* at 124 (quoting *Harrington v. Richter*, 562 U.S. 86, 102-03 (2011)). In other words, an "unreasonable" state court adjudication refers only to "extreme malfunctions" in the state court adjudication. *Mays v. Hines*, 592 U.S. 385, 391 (2021) (per curiam) (quoting *Richter*, 562 U.S. at 102).

[24] Yungman was shocked by "the lack of communication and trial preparation" by counsel. Exh. 10. Jeffrey Yungman 2018 Affidavit. "From my experience in 30 death penalty cases, they neglected to do any of the routine tasks attorneys regularly performed throughout their representation of capital clients." *Id.* Investigator Robert Minter, who was retained by Bowman's counsel, also noted that counsel was "not aggressive in represent[ing] his clients" and "did not like

can only properly be viewed through the lens of his racial bias. Specifically, while trial counsel had warned Bowman that the jury might be racially biased against him, lead counsel was the one who inserted racist arguments into the case through his omissions and arguments.

As the United States Court of Appeals for the Fourth Circuit observed in *Bennett v. Stirling*, 842 F.3d 319 (4th Cir. 2016):

> [W]hile a prosecutor "may strike hard blows, he is not at liberty to strike foul ones." *Berger v. United States*, 295 U.S. 78, 88 (1935). It is beyond dispute that "[t]he Constitution prohibits racially biased prosecutorial arguments." *McCleskey v. Kemp*, 481 U.S. 279, 309 n.30 (1987). Racial prejudice, "odious in all aspects, is especially pernicious in the administration of justice." *Rose v. Mitchell*, 443 U.S. 545, 555 (1979). For this reason, the Supreme Court has "engaged in 'unceasing efforts' to eradicate racial prejudice from our criminal justice system." *McCleskey*, 481 U.S. at 309 (quoting *Batson v. Kentucky*, 476 U.S. 79, 85 (1986)).
>
> [W]e remain sensitive to the Court's judgment that "the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination." *California v. Ramos*, 463 U.S. 992, 998–99 (1983). Courts cannot avert their eyes from the risk that "racial prejudice infect[ed] a capital sentencing proceeding ... in light of the complete finality of the death sentence." *Turner v. Murray*, 476 U.S. 28, 35 (1986) (plurality opinion).

Id. at 323 (cleaned up).

There can be no question in this case that racial bias infected Bowman's trial and sentencing proceedings. Indeed, even Richard Perez, one of the jurors that sentenced Bowman to death, "believe[s] that race played a role in this case." Exh. 11, Juror Richard Perez Affidavit. Perez now supports commutation of Bowman's sentence to a sentence of life in prison.

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to try cases." He was lackadaisical to the extent that he did not care if his investigators did not complete their assigned tasks. He was also deliberately obstructive to Bowman's mitigation investigator because counsel "strongly disliked" her and "considered her too pushy and headstrong." Rather than assist her by issuing subpoenas and assisting her with other tasks, counsel "refused and resented her for trying to do her job." Exh. 3, Investigator Robert Minter Affidavit.

To begin with, counsel failed to object to admission of evidence during trial of Bowman's DNA in seminal fluid from Martin's vaginal swabs taken during the autopsy, even though there was no evidence of criminal sexual conduct and Bowman was not charged with any sex offense. App. 3950, 4381, 4386. Because, as the pathologist conceded, the semen could have been several days old, App. 3954, this evidence could not serve to help identify the killer. Counsel clearly recognized that the State wanted to insert what was in his mind the racist, prejudicial argument about "a black man and white woman having sex."[25] App. 7712. Rather than object to its admission in trial evidence, however, counsel, calling Martin a "little girl," App. 4509,[26] and clearly recognizing the prejudicial potential of the sexual evidence, directly injected the racist argument in closing:

> [L]et's look at the DNA. It showed sometime that Miss Martin, who was friends with Mr. Bowman, Miss Martin who was friends with Mr. Gadson, Miss Martin who was friends with a lot of these folks in this community in Branchville, sometime Mr. Bowman and her had relations. Sometime. Do you think that was put there to try to poison you to get you angry? Do you think that was presented to want to get you to lash out? Do you think there was a reason? How can you tie that into this case? How?

App. 4505. During sentencing, the defense presented testimony that on the afternoon before her death, Bowman was alone with Martin in a bathroom for a while before leaving the home with

[25] This issue has never before been presented on Bowman's behalf, except in the very limited context that PCR counsel asserted that trial counsel failed to object to improper character and bad acts evidence during trial by failing to object to the DNA evidence of Bowman's semen in "the victim's vaginal cavity." App. 5712-13 (Third Amended PCR Application). Notably, undersigned counsel did not represent Bowman in PCR proceedings or when his federal habeas petition was filed. Raising an issue for the first time in this Court's original jurisdiction after all other avenues have been exhausted is not, however, an impediment to this Court's jurisdiction and ability to grant relief. *Butler*, 302 S.C. at 468, 397 S.E.2d at 88; *Tucker*, 346 S.C. at 489, 552 S.E.2d at 715.

[26] This is clearly how counsel viewed the victim as he continued calling her a "little girl" and a "little white girl" in his PCR testimony. *See, e.g.*, App. 7006, 7020, 7116-17, 7395, 7480, 7490.

her. App. 4830-31. Counsel implied during closing argument, without actually making the argument, that Bowman and Martin had sexual intercourse during this encounter. App. 4976.

> What was Miss Martin doing over at Frankie Martin's house? I don't know. Mr. Martin testified they were alone. Why is there an aggravating factor in here about criminal sexual conduct? Has anybody testified to you in here of nonconsensual relations between a human being and another human being? It doesn't matter whether Miss Martin who is shown in that picture, Mr. Bowman there as seated there happen to be friends.
>
> That is not to anger you, that's not for me to anger you and I apologize. And I raised my voice for a moment to point something out and that is this: You've got to prove, the State has to prove to you folks there was nonconsensual sex. Other than that we just muddy up the water.

App. 5001. The references to Martin's picture and Bowman, as he appeared in court, is clearly a head-nod to Martin being a "little [white] girl" with blonde hair, App. 4509, Exh. 12, Martin pictures from sentencing evidence, and Bowman being a very dark-skinned black man with a cornrow hairstyle at the time of arrest,[27] Exh. 13, News article from time of arrest with Bowman's picture. Bowman was picked on growing up "because his skin is so dark, darker than everyone else's." Exh. 14, Kendra Bowman Affidavit. People nicknamed him "Black" so much that he and his family finally just accepted it and started using "Black" as a nickname. *Id. See also* Exh. 15, Bowman (aka "Black") picture from sentencing; App. 3682, 3689, 3699, 3893; 4100.

Counsel's own racist thinking was even more clearly displayed during his PCR testimony. When asked why he did not present truthful evidence that Martin was known to prostitute for drugs with Bowman and with others during sentencing, even though counsel affirmatively presented evidence of Bowman dealing drugs to support his family, counsel said:

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[27] "[C]ornrows . . . are . . . most closely associated with Black people. NYC Commission on Human Rights, Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, available at https://www.nyc.gov/site/cchr/law/hair-discrimination-legal-guidance.page#:~:text=While%20a%20range%20of%20hair,closely%20associated%20with%20Black%20people (last visited on December 14, 2024).

> I think I portrayed what I needed to portray. If I'm in error again I apologize, I apologize to Marion. What I'm saying is, it does no good, I tried that Gardner case up here where they tried to portray that white girl being with five African American men and, Mr. Brown, you slander a victim, you know the little girl is dead, they got those nasty pictures in there in this penalty phase with her burned body, the statement allegedly, "Black, please don't shoot me, I got a baby." Marion would have known she had a child, he grew up with her. I tried to stay away from hurting Miss Martin in any way because all the evidence and all the facts show she got shot in the back.

App. 7123-24. Even though Gadson's prior statement about events at the crime scene included information that Martin was smoking crack in the vehicle at the crime scene, App. 9237, counsel did not present that information in sentencing – when Bowman had already been convicted of the offenses. He said, "I'm not going to portray my guy as the reason why she's dead, dope, sex, drugs. I mean, I'm making, the State prove their case." App. 7125. While being questioned in this line, counsel spontaneously blurted out his racist thinking, speaking directly to Bowman:

> Marion, what are you doing on Nursery Road at that time of the morning with a white female and African American males in Dorchester County? Really. This is 2001 but what good are you doing out there on a dirt road? . . . I have read this file backward and forward. If he's there he's a principal, if he's in the car. If he's not there, how does all these facts get known, how are all these facts to be told?

App. 7126.[28] Contrary to trial counsel's implications, PCR counsel suggested that a reason for being out on that dirt road at that time of the morning, consistent with Bowman being innocent and Gadson being the killer, could be that Bowman's purpose for being out there was for the victim to "smoke crack," App. 7128, or potentially prostitute herself in exchange for crack. Trial counsel responded, however, with no basis in fact, by simply asserting that most people would use drugs by "stay[ing] inside," App. 7128-29. Trial counsel's view of the case, based on his personal

[28] According to Jim Brown, counsel was looking at Bowman and speaking directly to him. It was so shocking that everyone in the courtroom was stunned and there was a long silence before the questioning continued. Exh. 16, Jim Brown Affidavit, at 2.

opinion, was that Bowman and Gadson "planned to bring this girl out there and dispose of her." App. 7129.

Trial counsel recalled that the autopsy included information that the victim had cocaine in her system. App. 7362. Counsel testified that he wanted to keep that information from the jury, along with any information "about whether or not people had ever touched Miss Kandee Martin in a certain way, degrading, sexual way." App. 7363.[29] While counsel conceded he was aware that the victim's general reputation was as a drug user and a person that prostituted herself for drugs,[30] in addition to her actually having a conviction for drug possession and being involved in "an indecent exposure case involving sex on the town square of Branchville," App. 7446,[31] counsel explained that he viewed presenting that truthful evidence as "hurting the victim." App. 7363-64. He did not even want to suggest that Bowman had her watch because she pawned it for drugs, despite viewing Bowman's possession of the watch as "tremendously" hurting his innocence defense. App. 7442.[32]

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[29] Again, counsel clearly assumed that Martin was sexually assaulted while alive or dead rather than even considering the possibility that she engaged in consensual relations with Bowman. Thus, counsel's view was that he was simply trying to avoid argument by the solicitor that a "young African American male wanted to go play with a dead [white] girl, oh, my God, think about that." App. 7567.

[30] Counsel was also aware that she had at least two children (and possibly three) by the time she was 19 years old, App.7367, as her son, Tyler, was almost two years old at the time of her death at 21 years of age, App. 4701. *See also* App. 5670 (Mitigation Specialist Dale Davis Affidavit).

[31] Dale Davis, the mitigation specialist retained by counsel, also provided evidence that during her investigation, she learned that Martin "was known in the Branchville law enforcement community to have been involved in loitering/prostitution activities in the area of Highway 78." App. 5670.

[32] And, inexplicably, whether to present this imbalance of evidence, in counsel's brain, was also tied to the fact that Bowman's jury, in counsel's brain, was "twelve people . . . that don't look like him," App. 7449, presumably meaning that it would only be acceptable for counsel to argue that Bowman dealt drugs in mitigation in order to survive and to truthfully argue that Martin prostituted herself for drugs if the jurors were people of color.

> [H]urting the victim I think would have hurt Marion more, maybe helped him a little bit evidentiary wise that she did dope. What I was worried about, I guess, where she got her dope from, and everybody in the world knew, and it came out in the penalty phase also, that Marion lived on the street, he was self supporting, he tried to find ways to support himself and he sometimes delved into something he shouldn't have delved into.
>
> But I also had the horrible experience dealing with the Missy McLaughlin trial where that lady was also accused of using her body for drugs, and believe me, it didn't sit well with that jury.

App. 7364.[33] Although counsel affirmatively presented evidence in mitigation that Bowman "was basically kicked to the curb at a young age and he would do what he had to do to survive," *id.*, including dealing drugs,[34] trial counsel again did not want to "hurt" the victim more by presenting evidence that she was prostituting for drugs and sometimes getting those drugs from Bowman, App. 7364.

In short, counsel viewed presentation of this truthful evidence, including evidence of the victim's addiction to crack, as simply an "attack [on] the victim," *id.*,[35] or pitting "the white girl versus the black young man," App. 7370,[36] or "black versus white, white with a black man [sexual

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[33] McLaughlin was the murder victim in the Joseph Gardner case previously mentioned in counsel's testimony as one of his former clients. https://murderpedia.org/male.G/g1/gardner-joseph.htm; App. 7123-24. While counsel clearly disbelieved the evidence presented that McLaughlin initially was voluntarily engaging in sexual acts with multiple men at the same time, it is notable that this Court found that information as a matter of undisputed fact. *State v. Gardner*, 332 S.C. 389, 391, 505 S.E.2d 338, 339 (1998).

[34] He did this despite counsel's later admission that he viewed evidence of drug dealing, regardless of the reason, as evidence of Bowman's lack of "social redeeming value." App. 7447-48.

[35] PCR counsel was very clear that he was talking only about truthful evidence and not slanderous allegations. *See, e.g.*, App. 7369 ("I'm not talking about attacking her, I'm talking about being truthful.")

[36] Counsel's bias against his own client is evident even in counsel's references to Martin as a "little white girl," and Bowman as a "man" or a "young man" several times, App. 7480 ("I wanted to show that this man would not hurt that little girl); *see also* App. 7370, 7395-96; when Bowman was 20 years old, App. 4645, and Martin was 21 years old at the time of her death, App. 3647.

relations]," which counsel viewed as "dirty." App. 7480-81.[37] Likewise, counsel seemed to view presenting truthful evidence that the victim was a drug user as equivalent to an argument that she "should die for the use of dope." App. 7372. Counsel somehow believed that presenting evidence in sentencing that the victim prostituted herself for drugs and had cocaine in her system at the time of her death as somehow opening the door or admitting that it was true that Bowman killed her "because she was going to rat him out for selling dope." App. 7372-73.

Counsel essentially admitted in PCR that he held opinions that a white 21-year-old female would not voluntarily be with two similarly aged black males in a remote area in the early hours of the morning under any circumstances. *See* Exh. 16, Jim Brown Affidavit at 2. Thus, the black males must have been there to commit sexual and violent crimes against the "little white girl." Similarly, counsel believed that a truthful explanation that the victim was known to prostitute herself for drugs would simply be viewed as an attack on the victim, slandering her, pitting "the white girl versus the black young man," and saying that she deserved to die because of her drug use. And, worse, counsel imputed his racist views to the jurors.

While counsel did not make as many racist statements during the trial as he did during the PCR proceedings, he still clearly made the racist argument that the victim was "a little [white] girl" and that the jury would be angered by the suggestion that she had consensual sexual relations with Bowman, a 20-year-old black male, who was also known to be her friend. This argument was made during both the guilt phase and sentencing closing arguments with counsel even apologizing for suggesting that there was a consensual sexual relationship between the two. App. 5001 ("That

[37] Again, counsel clearly viewed the suggestion that Martin had consensual sex with black men as demeaning, dirty, and hurting her, even though Martin was known as a person that "did not see race" and who dated black guys. Exh. 14, Kendra Bowman Affidavit. Indeed, counsel, but perhaps not the jury, was aware that her son Tyler is biracial. App. 4695, 4708.

is not to anger you, that's not for me to anger you and I apologize."). There is no question that this argument was prejudicial during both the guilt phase and sentencing of Bowman's trial.

"Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected." *Turner v. Murray*, 476 U.S. 28, 35 (1986). Indeed, "[t]he risk of racial prejudice infecting a capital sentencing proceeding is especially serious in light of the complete finality of the death sentence." *Id.* at 36. Specifically, in *Turner*, the Court noted a number of ways that racial prejudice could be in play in a capital sentencing proceeding.

> [A] juror who believes that blacks are violence prone or morally inferior might well be influenced by that belief in deciding whether petitioner's crime involved the aggravating factors specified . . . [of future dangerousness or a crime that was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim"]. Such a juror might also be less favorably inclined toward petitioner's evidence of mental disturbance as a mitigating circumstance. More subtle, less consciously held racial attitudes could also influence a juror's decision in this case. Fear of blacks, which could easily be stirred up by the violent facts of petitioner's crime, might incline a juror to favor the death penalty.

Id. at 34-35. Because of these concerns, the Court held that "a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias" during voir dire. *Id.* at 36-37.[38]

The Supreme Court has also made it clear generally that racial arguments with no actual bearing on the crimes or the issues in a capital case are improper. *See Dawson v. Delaware*, 503 U.S. 159, 168 (1992) (admission of evidence in sentencing that the defendant was a member of a

[38] Notably, counsel's own bias was also on display during jury selection as he failed to avail himself on Bowman's behalf of the opportunity to conduct voir dire to determine whether any of Bowman's jurors were racially biased. Nonetheless, one honest juror disclosed upon simply being asked about "any bias or prejudice" without reference to race in the question that he didn't "get along with people of color too well" meaning both "[b]lacks, mixed." App. 2066-67.

white racist prison gang was erroneous where the victim in the case was white, the evidence was not relevant to any issue before the jury in sentencing, and the evidence could not "be viewed as relevant 'bad' character evidence in its own right"). Similarly, this Court has condemned racist arguments that "inflame the passions or prejudices' of the jury." *State v. Bennett*, 369 S.C. 219, 231, 632 S.E.2d 281, 288 (2006). The court explained in *Bennett*:

> As a general rule, inflammatory remarks which are calculated to appeal to the passions or prejudices of a jury should be affirmatively condemned. *South Carolina State Highway Dep't. v. Nasim*, 255 S.C. 406, 411, 179 S.E.2d 211, 213 (1971). "[W]hether or not the particular arguments are so prejudicial as to constitute reversible error depends upon the nature of the utterances and the circumstances under which they were made." *Id.*

Id. at 231, 632 S.E.2d at 288.

> As a starting point, we recognize that the terms "blond lady" and "King Kong" [used by the Solicitor to refer to the defendant's white girlfriend with blonde hair and the large black defendant, respectively,] could have racial connotations. However, this court's jurisprudence does not prohibit the use of terms with racial meanings, nor does our case law stand for the proposition that arguments or evidence in a case must be void of racial allusions. Instead, this court has recognized that it is impermissible to use race to "inflame the passions or prejudices" of the jury. Accordingly, our inquiry focuses on how these terms were used in Appellant's case.

Id. Based on the facts and context of the solicitor's use of these terms in *Bennett*, however, this Court did not find reversible error.[39]

[39] The federal courts disagreed. Both The Honorable Richard M. Gergel, United States District Court for the District of South Carolina, and a panel of the United States Court of Appeals for the Fourth Circuit found this Court unreasonably determined that the Solicitor's references to the defendant during closing arguments were not an appeal to racial prejudice or a violation of due process. *Bennett v. Stirling*, 170 F.Supp.3d 851 (D.S.C.), *aff'd*, 842 F.3d 319 (4th Cir. 2016). As the Fourth Circuit observed, the Solicitor did not just call Bennett "King Kong." Instead, the solicitor used "a slew of derogatory terms," that "also labeled Bennett a 'caveman,' a 'mountain man,' a 'monster,' a 'big old tiger,' and '[t]he beast of burden.'" *Bennett*, 842 F.3d at 321. This was in addition to the solicitor referring to Bennett's "sexual partner as 'the blonde-headed lady,' alerting the jury to the interracial nature of the relationship" and "intentionally elicit[ing] irrelevant, inflammatory testimony from one of the state's witnesses, who recounted a dream in which he was chased by murderous, black Indians. *Id.* The prosecutor's arguments "were poorly

In a similar context involving a solicitor's arguments based on religion, this Court condemned the "religious prejudice" inherent in a solicitor's "inflammatory" references to domestic terrorism and the 9/11 terror attacks in a capital case that did not involve terrorism but involved a Muslim defendant as these arguments "served only to inflame the passions and prejudice of the jury." *State v. Vasquez*, 388 S.C. 447, 460, 698 S.E.2d 561, 567 (2010). In *Vasquez*, while the facts of the case—an armed robbery and double homicide at a Burger King by a previously fired, disgruntled employee—were "horrific" and the evidence of guilt was "overwhelming," counsel's failure to object to the solicitor's argument was prejudicial in sentencing because "the sheer weight of the evidence in the instant case does not negate the prejudicial impact of the solicitor's improper comments." *Id.* at 463-64, 698 S.E.2d at 569.

Likewise, the Supreme Court has specifically held that it is improper and amounts to ineffective assistance of counsel for defense counsel in a capital sentencing to present expert evidence and arguments that rely simply on racist stereotypes that a black defendant is "predisposed" to violent conduct simply because of his race. *Buck*, 580 U.S. at 119. While "[i]t would be patently unconstitutional for a State to argue that a defendant is liable to be a future danger because of his race," it is also improper for defense counsel to present such evidence and argument about his own client. *Id.* Indeed, it is more harmful when defense counsel makes the

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disguised appeals to racial prejudice," that were "unmistakably calculated to inflame racial fears and apprehensions on the part of the jury," by "alternat[ing] between characterizing Bennett as a primitive, subhuman species and a wild, vicious animal." *Id.* at 324. The "coup de grace" was to warn that if Bennett were not sentenced to death, he would "come back" and it would "be like meeting King Kong on a bad day." *Id.* The court rejected this Court's findings that these were not racist arguments, finding that "[i]t is impossible to divorce the prosecutor's 'King Kong' remark, 'caveman label, and other descriptions of a black capital defendant from their odious historical context. And in context, the prosecutor's comments mined a vein of historical prejudice against African–Americans, who have been appallingly disparaged as primates or members of a subhuman species in some lesser state of evolution." *Id.* at 324-25.

racist arguments because jurors expect to evaluate and question the state's evidence, but "[w]hen a defendant's own lawyer puts in the offending evidence, it is in the nature of an admission against interest, more likely to be taken at face value." *Id.* at 122; *see also Ingle v. State*, 348 S.C. 467, 472, 560 S.E.2d 401, 403 (2002) (recognizing that the impact of prejudicial evidence is heightened when "it came as part of what was supposed to be petitioner's defense."). In short, "[n]o competent defense attorney would introduce such evidence about his own client." *Buck*, 580 U.S. at 119; *see also People v. Sanders*, 182 N.E.3d 151, 153-56 (Ill. Ct. App. 2020) (holding that defense counsel's racist arguments for a black client, including his own personal racial biases and arguments that a "black man belongs in a squad car" and he would be scared in an "all-black area," in an aggravated battery case involving a white victim was ineffective assistance of counsel as "[t]he introduction of race into an argument is not permissible" where "[n]one of the racial comments were based on the evidence"); *State v. Davis*, 872 So.2d 250, 252 (Fla. 2004) (emphasis omitted) (holding that defense counsel's explicitly racist arguments in a capital case involving the rape of a white woman by a black man that he was "a white southerner" and did not "like black people" who "make me mad just because they're black," even when made allegedly to get jurors to admit their own racism, were "racist . . . expressions of prejudice" that "cannot be tolerated" and amounted to ineffective assistance of counsel); *Miller v. State*, 728 S.W.2d 133, 135 (Tex. Ct. App. 1987) (holding that defense counsel's racist arguments that the state's primary witness and the burglary victim in the case were both from Nigeria and likened them to "a man swinging from limb to limb with a banana or coconut in one hand" was a "damag[ing]" argument that amounted to ineffective assistance of counsel).

Bowman's counsel clearly crossed the line in this case by permitting the State to present improper evidence during the trial and sentencing and injecting his own racial biases into argument

in the case. Likewise, as addressed above, counsel failed to adequately prepare and present a trial defense and mitigation case in sentencing because of counsel's own racial biases and prejudices. Bowman's convictions and death sentence must be set aside under these circumstances, which are shocking to the conscience and involve constitutional violations. *See* Exh. 15, Jim Brown Affidavit, at 2–3.

c. Carrying Out Bowman's Execution Would Be Shocking to The Universal Sense Of Justice In Light Of Bowman's Growth And Maturity In The 22 Years Since He Was Sentenced To Death.

As noted previously, this Court has reserved relief in its original jurisdiction for those cases where there is a constitutional violation, such as the violations in this case, in conjunction with "the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice." *Moore*, 436 S.C. at 219, 871 S.E.2d at 429; *see also Torrence*, 305 S.C. at 69, 406 S.E.2d at 328 (the Court's original jurisdiction gives it the "ability to provide relief to those who have, for whatever reason, been utterly failed by our criminal justice system").

Marion Bowman has been failed by this system. As addressed above, the State's case was built on the incentivized testimony of biased witnesses with a host of credibility issues while the State withheld much of the material impeachment evidence. The state did so despite the solicitor's belief that a life sentence would be appropriate, even assuming that Bowman was guilty as the State alleged.[40] In response, trial counsel pressured Bowman, who was only 20 years old at the time of his arrest, to plead guilty rather than actually prepare and present an adequate defense. Trial counsel then injected racist opinions and beliefs into his representation of Bowman and into both phases of Bowman's trial.

[40] *See supra* Note 20.

An argument could be made that "executing a prisoner who has already spent some [22] years on death row violates the Eighth Amendment's prohibition against cruel and unusual punishment." *Lackey v. Texas*, 514 U.S. 1045, 1045 (1995) (Stevens, J., memorandum respecting denial of certiorari); *see also Knight v. Florida*, 528 U.S. 990, 996 (1999) (Breyer, J., dissenting from denial of certiorari). The acceptable reasons for capital punishment recognized in *Gregg v. Georgia*, 428 U.S. 153, 183 (1976), of "retribution" and "deterrence" arguably no longer "retain[] any force for prisoners who have spent some [22] years under a sentence of death." *Id.* Likewise, it is arguable that the fault for Bowman's 22-year existence on death row primarily lies with the solicitor who deliberately withheld *Brady* evidence. *See Lackey*, 514 U.S. at 1047. Notably, "[a]s he awaits execution, petitioner has endured especially severe conditions of confinement, spending up to 23 hours per day in isolation in a 6-by 9-foot cell. . . . The dehumanizing effects of such treatment are undeniable." *Thompson v. McNeil*, 556 U.S. 1114, 1115 (2009) (statement of Stevens, J., respecting denial of certiorari). In sum, as Justice Stevens acknowledged, "our experience during the past three decades has demonstrated that delays in state-sponsored killings are inescapable and that executing defendants after such delays is unacceptably cruel." *Id.* at 1116.

Bowman is not making a *Lackey* argument under the Eighth and Fourteenth Amendments to the United States Constitution or under Article I, Sections 3 and 15 of the South Carolina Constitution. Instead Bowman asserts this Court can and should consider the length of time Bowman has spent on death row as part of its determination that Bowman's death sentence is "shocking to the universal sense of justice.," In short, this Court is permitted and, indeed, should be required to determine whether the death sentence is excessive considering the character of the defendant at the time of this Court's review in its original jurisdiction.

This Court can review this issue as a matter of due process under the state constitution, *Moore*, 436 S.C. at 223, 871 S.E.2d at 432 (quoting S.C. Const. art. I, §3) (no "person [shall] be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws"), and, as a statutory requirement, to determine "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime *and the defendant*." S.C. Code § 16-3-25(C)(3) (emphasis added).

In carrying out this Court's statutory duty, in light of its power to grant a writ of habeas corpus in this Court's original jurisdiction, it is appropriate for this Court to truly consider the defendant's character in its analysis. This should not just be limited to a defendant's character as it was depicted at a trial that occurred over two decades ago in a case that was infected by both the prosecutor deliberately withholding evidence from the defense and also defense counsel's racially biased arguments before the jury and strategy decisions that were actively harmful to Bowman's defense. While he seeks an appropriate remedy for the constitutional violations at his capital trial, Marion Bowman is a different man now than he was more than two decades ago and this growth and maturation is an essential character consideration. In short, this Court has reserved for itself the "ability to provide relief to those who have, for whatever reason, been utterly failed by our criminal justice system." *Torrence*, 305 S.C. at 69, 406 S.E.2d at 328. That power should be utilized in this case.

For almost 200 years, prior to the decision in *Torrence*, this Court assessed capital cases on appeal through the lens of *in favorem vitae* review, which literally means "in favor of life." *Id.* at 60 n.1, 406 S.E.2d at 324 n.1. Recognizing that "[t]he issue to the defendant is life and death" under *in favorem vitae* review, *State v. Thompson*, 122 S.C. 407, 434, 115 S.E.2d 326, 335 (1922), regardless of whether trial counsel objected, this Court reviewed "the entire record for legal error,

and assume[d] error when unobjected-to but technically improper arguments, evidence, jury charges, *etc.* are asserted by the defendant on appeal in a demand for reversal or a new trial." *Torrence*, 305 S.C. at 60-61, 406 S.E.2d at 324. Likewise, this Court reviewed the entire record for error regardless of whether the issue was briefed or argued on direct appeal. *State v. Boone*, 228 S.C. 438, 447, 90 S.E.2d 640, 644 (1955) ("[I]n keeping with our invariable rule of *in favorem vitae*, we have considered all the original exceptions, whether or not orally argued, and have combed the record for prejudicial error, disregarding whether or not it may have been made the basis of exception or question.") (citation omitted). This expanded review was conducted in capital cases from the beginning of this State's existence and continued even after the death penalty statute was amended, S.C. Code § 16-3-10 to 16-3-28, in accordance with the expanded protections required by *Furman v. Georgia*, 408 U.S. 238 (1972), and *Gregg*. *State v. Shaw*, 273 S.C. 194, 211, 255 S.E.2d 799, 807 (1979). It was used to grant relief in numerous capital cases both before and after *Shaw*. *See, e.g., State v. Diddlemeyer,* 296 S.C. 235, 238, 371 S.E.2d 793, 795 (1988) (trial court's failure to appoint counsel qualified under S.C. Code § 16-3-26(B) required a new trial where the record, reviewed under *in favorem vitae* analysis, "is replete with instances of improper testimony and unpreserved exceptions"); *State v. Scott*, 209 S.C. 61, 66-67, 38 S.E.2d 902, 904 (1946) (finding *in favorem vitae* that the trial court's instruction directing the jury to determine nature of defendant's alleged confession by inquiring as to whether it was made freely and voluntarily, without reward or hope of reward, without further directing jury to consider whether the alleged confession was extorted by fear and physical violence, constituted reversible error, especially where the defendant testified that he had been beaten, that his alleged confession was coerced, and that he made it in fear).

This Court abolished the practice in *Torrence*, reasoning it was no longer necessary "in light of advances in the quality of legal representation; in light of the many protections and avenues of relief available to criminal defendants; and in light of the modern day restricted use of capital punishment post *Furman* . . ." 305 S.C. at 58, 406 S.E.2d at 324.[41] The additional protections this Court listed as making the "conviction of an innocent person . . . unlikely" in modern times included state post-conviction review, federal habeas corpus procedure availability, and the sentence review required under S.C. Code § 16-3-25. *Id*. at 64, 406 S.E.2d at 326. Notably, however, to date none of these avenues actually take into account the defendant's character at the time of the offenses or his character as it develops over the years following sentencing.

State post-conviction relief proceedings allow only for consideration of legal claims involving a federal constitutional, state constitutional or statutory violation; lack of jurisdiction by the sentencing court; a sentence that exceeds the maximum authorized by law; evidence of new material facts that "require[] vacation of the conviction or sentence in the interest of justice"; unlawful detention or restraint; or any common law ground or error. S.C. Code § 17-27-20(A). The only one of these provisions that could even arguably allow for new evidence concerning the defendant's character based on its plain language is S.C. Code § 17-27-20(A)(4) ("That there exists evidence of material facts, not previously presented and heard, that requires vacation of the

[41] South Carolina is now among the most restrictive appellate courts in the country. It does not recognize or permit analysis of errors that are even plainly obvious on appeal, such as is permitted in federal courts and many other state jurisdictions. *See, e.g.,* Fed. R. Crim. Proc. 52(b) ("A plain error that affects substantial rights may be considered even though it was not brought to the court's attention"); *Rosales-Mirales v. United States*, 585 U.S. 129 (2018) (holding the Court of Appeals abused its discretion in failing to correct plain error in the District Court's miscalculation of the Sentencing Guidelines range). Even in capital cases, issues not properly preserved at trial may not be raised for the first time on appeal in South Carolina courts, *State v. Vanderbilt*, 287 S.C. 597, 340 S.E.2d 543 (1986), except in this Court's original jurisdiction, *see Butler*, *supra*; *Tucker*, *supra*.

conviction or sentence in the interest of justice"), which is limited by this Court's holdings to "after discovered evidence" that "would probably change the result if a new trial is had" and "is material to the issue of guilt or innocence." *Jamison v. State*, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014). A PCR court is prohibited from commuting a sentence to life rather than simply affirming or vacating a death sentence. *Singleton v. State*, 313 S.C. 75, 85, 437 S.E.2d 53, 59 (1993).

Federal habeas corpus proceedings also do not allow for evaluation of the defendant's character in the context of the appropriateness of the sentence. First, generally speaking, federal courts may review an issue only if it has been exhausted – meaning it was fairly presented and litigated in accordance with state procedures – in state court. *Shinn v. Ramirez*, 596 U.S. 366, 378 (2022). If the claim has been exhausted and adjudicated in state court, a federal court reviewing the issue in habeas proceedings may only grant relief if the state court adjudication:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

"[C]learly established Federal law" under § 2254(d)(1) refers to "the holdings, as opposed to the dicta, of [the Supreme] Court's decisions as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000). Nothing in federal law is similar to S.C. Code § 16-3-25(C)(3) or otherwise requires a court to determine whether a sentence is excessive or proportional. *See Pulley v. Harris*, 465 U.S. 37, 43-44 (1984) (finding "no basis in [the United States Supreme Court's] cases for holding that comparative proportionality review by an appellate court is required in every case in which the death penalty is imposed and the defendant requests it."). Like state post-conviction courts, the federal courts are limited to legal remedies based on a

"violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); 28 U.S.C. § 2254(a).

With no equitable remedy or analysis possible in state post-conviction or federal habeas proceedings, the only possible equitable remedy is left to this Court, which historically has not considered the character of the defendant at all, let alone at the time he is actually facing execution years after his arrest, conviction, and sentencing. Specifically, this Court, from its very first interpretation of the statutory requirement under S.C. Code §16-3-25(C)(3), has viewed its role as simply comparing the death sentence imposed in the case under review on direct appeal with death sentences imposed in "similar cases." *Shaw*, 273 S.C. at 211, 255 S.E.2d at 807. The Court has also at times considered whether the death penalty imposed in the case under review was "disproportionate to the severity of the offense" committed in the case. *State v. Hyman*, 276 S.C. 559, 570-71, 281 S.E.2d 209, 215 (1981). The Court noted – only three years after *Shaw* – its discomfort with the "profound tension between the requirement of individualized sentencing and the notion of comparative review" in the opinions of the United States Supreme Court following *Furman*. *State v. Copeland*, 278 S.C. 572, 587, 300 S.E.2d 63, 72 (1982). The Court noted, however, that the Supreme Court had not required the states to conduct any particular model of proportionality review. *Id.* Thus, that question was left to the states to resolve. And, this Court determined that its "search for 'similar cases' can only begin with an actual conviction and sentence of death rendered by a trier of fact in accordance with § 16-3-20 of the Code." *Id.* at 591, 300 S.E.2d at 74. Specifically, the Court declined to consider cases where a jury did not impose a death sentence because the "individualized sentencing" required by the U.S. Supreme Court resulted in "mercy." *Id.* Likewise, the Court declined to consider cases where a death sentence was imposed but set aside due to a finding of prejudicial trial error. *Id*. at 592, 300 S.E.2d at 75. For

the first time, however, in *Copeland*, the Court did at least suggest that it considered the mitigating evidence presented by the appellants during trial before finding no "similar" case that would permit a "meaningful comparative review," but nonetheless finding that the death sentences imposed were "appropriate and neither excessive nor disproportionate in light of their crimes and their respective characters." *Id.* at 595, 300 S.E.2d at 76-77. The Court concluded that going forward "proportionality review in South Carolina is first and foremost directed to the particular circumstances of a crime and the specific character of the defendant. Comparative review will be thereafter undertaken if possible." *Id.* at 595, 300 S.E.2d at 77.

Thereafter, in a few cases, the Court cited mitigating testimony presented during trial and sentencing before affirming the death sentences without any real discussion of the issue. *State v. Woomer*, 278 S.C. 468, 474-76, 299 S.E.2d 317, 320-22 (1982); *State v. Yates*, 280 S.C. 29, 41-45, 310 S.E.2d 805, 812-14 (1982). After those early cases, however, this Court either did not reference mitigating evidence or the character of the defendant, s*ee, e.g., State v. Adams*, 279 S.C. 228, 241-42, 306 S.E.2d 208, 215-16 (1983); *State v. Skipper*, 285 S.C. 42, 49-50, 328 S.E.2d 58, 62 (1985), or simply noted the mitigation presented during sentencing that was properly considered by the jury, *see, e.g., State v. Plath*, 281 S.C. 1, 19-20, 313 S.E.2d 619, 629-30 (1984); *State v. Koon*, 285 S.C. 1, 3-5, 328 S.E.2d 625, 626-27 (1984); *State v. Gaskins*, 284 S.C. 105, 130-31, 326 S.E.2d 132, 146-47 (1985). Thereafter, by 1984, in a number of cases, this Court simply stopped referencing mitigation, character of the defendant, or anything other than a cursory finding based on the facts of the crime alone. *See, e.g., State v. Truesdale*, 285 S.C. 13, 21, 328 S.E.2d 53, 57 (1984) ("The death penalty is fully justified by the brutal homicide, accompanied by rape, reflected in the evidence of this case. The crime was heinous."); *State v. Chaffee*, 285 S.C. 21, 35-36, 328 S.E.2d 464, 472 (1984) (noting, after summarizing the facts of the crime, that "[i]t would

be difficult to conceive of crimes more heinous"); *State v. Kornahrens*, 290 S.C. 281, 290-91, 350 S.E.2d 180, 186-87 (1986) (summarizing the crimes before affirming the death sentence).

By 1987, there was no mention of the facts relating to the crimes, the aggravation, the mitigation, or the "character" of the defendant at all – other than perhaps the broad categories of the aggravating factors – in this Court's affirmances under S.C. Code § 16-3-25(C)(3). *See, e.g. State v. Owens*, 293 S.C. 161, 169, 359 S.E.2d 275, 279 (1987); *State v. Bell*, 293 S.C. 391, 405, 360 S.E.2d 706, 714 (1987); *State v. Howard*, 295 S.C. 462, 473, 369 S.E.2d 132, 138 (1988); *State v. Jones*, 298 S.C. 118, 124, 378 S.E.2d 594, 597-98 (1989); *State v. Smith*, 298 S.C. 482, 488, 381 S.E.2d 724, 727 (1989); *State v. Elmore*, 300 S.C. 130, 134, 386 S.E.2d 769, 771 (1989). This continued for decades, even in cases where the appellant briefed and argued the proportionality issue at length. *See, e.g., State v. Patterson*, 324 S.C. 5, 22, 482 S.E.2d 760, 768 (1997). This cursory treatment was also applied in Bowman's direct appeal. *Bowman*, 366 S.C. at 502-03, 623 S.E.2d at 387.

In 2011, however, on direct appeal after a capital defendant argued before the trial court that the court's "current proportionality review is deficient because it fails to examine cases where death was not imposed and cases where death was not even sought," the Court still only conducted its cursory analysis, but did note "concern that restricting our statutorily-mandated proportionality review to only similar cases where death was actually imposed is largely a self-fulfilling prophecy as simply examining similar cases where the defendant was sentenced to death will almost always lead to the conclusion that the death sentence under review is proportional." *State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n.8 (2011). Despite this noted concern, however, this Court went right back to the business, as usual, of cursory statements of fulfilling the review required by S.C. Code § 16-3-25(C)(3).

Finally, in *Moore*, 436 S.C. at 211, 871 S.E.2d at 425, this Court ordered briefing and granted Moore's motion to argue against the precedent of *Copeland*. After reviewing the issue anew, this Court held that "the Court is not statutorily required to restrict its proportionality review of 'similar cases' to a comparison of only cases in which a sentence of death was imposed." *Id*. Nonetheless, the Court held that Moore was not entitled to habeas relief in its original jurisdiction on his claim that the Court's proportionality review was inadequate. *Id.* Again, Moore and this Court focused on the facts of the crime and cases involving the aggravating circumstance of armed robbery, which was the applicable aggravating circumstance in Moore's case. Moore also argued that the Court should "expand the relevant pool of cases to be reviewed beyond those in which a death sentence was imposed." *Id*. at 225, 871 S.E.2d at 433. The Court agreed that its comparative proportionality review statute "should not be so narrowly construed." *Id.*

> We agree with Moore . . . that the language of South Carolina's proportionality statute does not expressly limit the pool of cases to only those in which the death penalty was actually imposed. For convictions of murder, therefore, a review can ostensibly encompass a comparison of death-eligible cases for which a record is available for our review. This can include, for example, cases where a defendant's conduct was eligible for a capital sentence, but the State elected to seek only a life or lesser sentence, as well as cases where a jury considered but ultimately declined to impose a death sentence. The comparison cases must have a record because the General Assembly indicates in subsection 16-3-25(E) that this Court must include references in its opinion to the cases considered and transmit the records of those cases to the circuit court in the event resentencing is ordered. *See* S.C. Code Ann. § 16-3-25(E) (2015) ("The court shall include in its decision a reference to those similar cases which it took into consideration."); *id.* § 16-3-25(E)(2) ("The records of those similar cases referred to by the Supreme Court of South Carolina in its decision, and the extracts prepared as hereinafter provided for, shall be provided to the resentencing judge for his consideration."). Accordingly, we clarify *Copeland* and hold subsection 16-3-25(C)(3) does not limit the pool of comparison cases to only those in which the defendant actually received a sentence of death.

Id. at 226, 871 S.E.2d at 433. The Court then considered the additional cases Moore argued should be in the expanded pool of comparison cases "that would have been available at the time of Moore's

direct appeal and comparative proportionality review in 2004," but still determined that Moore's sentence was "not disproportionate to the penalties given in other similar cases." *Id.* Again, there was no discussion at all about mitigation presented during Moore's trial about the "character of the defendant" at the time of the offenses or at the time of this Court's original jurisdiction review approximately 21 years after the crimes. And, to be clear, Moore did not assert that evidence of his character at the time of review should be considered.

In *Moore*, the Court simply noted that the General Assembly designated the aggravating circumstances that "qualify a defendant for a capital sentence." *Id.* at 229, 871 S.E.2d at 435. Whether those aggravating circumstances have been established is "a determination for the jury, which must then decide whether to recommend a death sentence or a life sentence." *Id*. This Court thus claimed no responsibility for those decisions, just as the Court claimed "no control over the actions of a solicitor" in deciding when to seek a death penalty. *Id.* In short, this Court proclaimed:

> Whether this Court would impose a death sentence under the same circumstances is not within the permitted scope of this Court's appellate review. Rather, the Court's task in comparative proportionality review aims to ensure that a jury's decision was not the result of arbitrariness. . . . To the extent Moore urges the Court to find his sentence disproportionate because he did not bring a weapon to the scene and had no intent to commit the offenses for which he was convicted, we hold, as we must, that this assertion does not negate the jury's findings as to his intent, and a jury has found against him in that regard. This Court's scope of review does not allow it to disregard the factual findings in the case and pronounce an alternative sentence in these circumstances.

Id.

Following *Moore*, this Court essentially has returned to business as usual in considering only the facts of the crimes and the aggravating circumstances without any mention of mitigation or the "character of the defendant." *See, e.g.*, *State v. Jenkins*, 436 S.C. 362, 394-95, 872 S.E.2d 620, 637 (2022); *State v. Jones*, 440 S.C. 214, 264-65, 891 S.E.2d 347, 373-74 (2023). Most

recently, this Court addressed the issue of proportionality in *State v. Owens*, Appellate Case No. 2024-001397 (Sep. 12, 2024) (unpublished), Exh. 17, where Owens faced imminent execution and was, in fact, executed on September 20, 2024. In *Owens*, the Court noted that the death-sentenced inmate included "a belated claim of disproportionality," seeking a second proportionality review under the standards set forth in *Moore*. *Id.* at 10. In reviewing this claim, the Court held that, while the "similar cases" universe for comparison is not limited to only those cases in which the death penalty was imposed, nothing in *Moore* required the consideration of cases in which the death penalty was not imposed. *Id.* Likewise, the Court noted that "*Moore* did not set forth a retroactive rule requiring a new proportionality review that includes cases in which the death penalty was not imposed." *Id.* In short, *Moore* simply clarified the application of S.C. Code § 16-3-25(C)(3) for cases going forward. *Id.* And, this Court views its task under section 16-3-25(C)(3) "as an essential task for this Court to ensure the jury's decision was not the result of arbitrariness. *Id.* (citing *Moore*, 436 S.C. at 222-23, 871 S.E.2d at 431). Again, in applying its analysis, the Court discussed only the facts of the crimes and the aggravation evidence in affirming Owens' death sentence under 16-3-25. *Id.* at 10-11. But, again, Owens did not assert that evidence of his character at the time of review should be considered.

Bowman specifically asserts that this Court's role in original jurisdiction, in reviewing constitutional violations and determining whether there is a "denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice," *Moore*, 436 S.C. at 219, 871 S.E.2d at 429, must include a materiality analysis under *Brady v. Maryland* and a prejudice analysis under *Strickland v. Washington* that also considers the mitigating evidence of the petitioner's character at the time of the original jurisdiction review. This renewed "*in favorem vitae*" analysis is urged only for use in capital cases in this Court's original jurisdiction. Part of this analysis should include

a renewed analysis under S.C. Code § 16-3-25(C)(3), which despite this Court's prior holdings, expressed in *Moore,* 436 S.C. at 229, 871 S.E.2d at 435, is not strictly limited to an "appellate review." Nothing in the plain language of the statute or the history of the statutory provision requires such a restricted interpretation. In short, this provision permits and indeed requires this Court to make its own judgment concerning whether the death penalty is an appropriate punishment or not. And, in circumstances where this Court's original jurisdiction review of a constitutional violation is delayed by more than 22 years, this Court should consider a broader analysis of the case and the mitigation evidence available now in determining the materiality and prejudice in sentencing rather than simply reviewing the mitigation presented during sentencing in 2002, when Bowman was only 21 years old, and represented by racist counsel in a trial proceeding infected by racist arguments and where the State withheld material evidence from the defense.

As discussed in more detail in the statement of facts, despite his racism and failure to adequately investigate the case, Bowman's defense counsel presented significant mitigation evidence of trauma and neglect that permeated Bowman's childhood, including witnessing his father's violence towards his mother, his father's abandonment of the family, and then the poverty of the family and daily physical abuse of Bowman's mother with switches and belts. App. 4793-94. Bowman, while still a child barely out of elementary school, became the caregiver for his mother and sisters when his mother began suffering from physical ailments App. 4743, 4747-48.

The defense also called witnesses to testify about Bowman's positive behavior in pretrial detention and presented an expert in prison adjustment and future dangerousness, who testified that Bowman would adjust well to prison life and would never be released. *Bowman v. State*, 422

S.C. 19, 809 S.E.2d 232 (2018). This evidence, although compelling, pales in comparison to the mitigating evidence available now.

i. Bowman's Age and Brain Development at the Time of the Offense.

Bowman was only 20 years old at the time of his arrest. The age at the time of offense is an important factor to consider when deciding whether a sentence is excessive or disproportionate, as seen in several Supreme Court cases which have relied on and cited to a comprehensive body of research on adolescent development in its opinions examining youth sentences, culpability, and custody. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 569-70 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v. Alabama*, 567 U.S. 460, 471-73 (2012); *see also Aiken v. Byars* 410 S.C. 534, 765 S.E.2d 572 (2014). In *Roper*, the Court held that the Eight Amendment prohibited the execution of a person who was younger than 18 at the time of the offense, because their "lack of maturity" and "susceptib[ility] to influence and to psychological damage" foreclosed their classification "with reliability . . . among the worst offenders" for whom capital punishment is reversed. 543 U.S. at 571-73. The Court acknowledged that, "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." *Id*. at 574. While the court in *Roper* decided to draw a definitive line, the research continues to show that "important neurobiological development is ongoing throughout the teenage years and continuing into the mid 20s." Exh. 18, Elizabeth Cauffman, Ph.D., Report at 2.

Bowman's brain development was also likely affected by substance abuse. "[T]he human brain does not reach its mature, adult form until after the adolescent years have passed and a person has entered young adulthood, which occurs at approximately age 25." *Id.* at 4. The majority of brain growth does occur prior to adolescence, but there is "considerable refinement within the brain that occurs across adolescence and through the transition period – particularly in the area of

prefrontal cortex, which is among the last to develop. *Id.* at 4. The pre-frontal cortex is "responsible for evaluation of future consequences, the ability to weigh risk and rewards, and general decision-making processes." *Id*. When an individual abuses substances the areas of the brain that are being refined during their adolescence years are affected. *Id*. at 6. Substance use has been "associated with heightened impulsivity, impaired affect regulation, poor judgment, and less successful decision making." *Id.* (citations omitted). While research suggests that substance use "may suppress age-typical growth in psychosocial maturity from adolescence to young adulthood" when the individual stops using substances they do regain psychosocial maturity. *Id*. at 7.

Forensic psychiatrist Donna Maddox, M.D., who completed a psychiatric evaluation of Bowman in 2023, concluded, consistent with the research discussed by Dr. Cauffman, that at the time of Bowman's charges, his "brain development was not yet complete." Exh. 19, Donna Maddox, M.D., Report at 12. She found that his cognition was additionally impaired by "his extensive use of alcohol." *Id.* Dr. Maddox also found that Bowman's cognitive function could have also been impacted by a "third close head injury." *Id.*

Susan Knight, Ph.D., also recognized that Bowman was 20 years old at the time of the offense, which, as noted by Dr. Cauffman and Dr. Maddox, was "a period of neurobiological immaturity." Exh. 20, Susan Knight, Ph.D., Report. She noted:

> [Y]outh are inherently more impulsive and reckless, without forethought or consideration of consequence. Such youthful traits reflect the immaturity of adolescent brain development, and is why violence spikes in late adolescence, and declines thereafter.

Id. at 18.

At trial, contrary what we now know about brain development, the state argued during sentencing that Bowman was an "adult," who could serve in the Army and vote. App. 4821; *see also* App. 4961. The defense social worker only responded that 21 years old was "pretty young."

Id. Likewise, in closing arguments in sentencing defense counsel barely made a handful of passing references to Bowman's age and mentality as mitigating. *See, e.g.*, App. at 4978, 4995, 5004, 5006.

ii. Bowman's Maturity, Prison Adaptability, and Lack of Dangerousness.

At trial, James E. Aiken, a former warden at the South Carolina Department of Corrections (SCDC), was qualified as an expert witness for the defense in the areas of prison adjustment and future dangerousness. Aiken opined that Bowman "adjusted relatively well" to incarceration in Orangeburg, Dorchester, and the South Carolina Department of Corrections while serving a prior sentence. While in pretrial confinement, Aiken testified that Bowman, "a fairly young individual" had done some "positive things" while in confinement. App. at 4843. Aiken had no concerns or reservations that Bowman would be able to adapt to prison life. App. at 4844-45.

Twenty years later, Dr. Maddox and Dr. Knight, both of whom are mental health experts with experience in correctional settings,[42] have evaluated Bowman and his records and determined that Aiken was correct. Beyond that, however, it is now clear that Bowman's death sentence is excessive in light of how he has matured and improved himself consistent with scientific research over the 22 years he has spent on death row. His brain has fully developed; he has matured; he has no mental illness, average intelligence, and no cognitive disorder; he has maintained position family relationships and mentally and emotionally supports many family members; he has had positive relations with correctional employees; he has assisted staff in carry out their duties; he has encouraged and assisted other death-sentenced inmates to adapt to confinement and cooperate with correctional staff; he is very religious/spiritual and relies on prayer and Bible Study daily to cope

[42] Exh. 20, Donna Maddox, M.D., Curriculum Vitae; Exh. 22 Susan Knight, Ph.D., Curriculum Vitae.

with confinement and maintain a positive attitude; and he has worked hard to improvement himself.

As summarized by Dr. Maddox:

> Bowman has spent 23 years in confinement. During this period of time, his brain completed maturation, he stopped drinking and using any illicit substances, and he has adapted to his incarceration.

Exh. 19 at 14. Bowman is "a model death row inmate," who "has not had any assaultive disciplinaries during his present incarceration. His only assaultive disciplinary occurred during his YOA sentence" served prior to his current offenses and "Bowman did not initiate th[at] fight." *Id.* Further, Bowman "has successfully adapted to long term incarceration.[43] He has developed a routine, maintains familial relationships and focuses on others as part of his coping. Mr. Bowman also writes poems to cope." *Id.* at 10.[44] Bowman's daily routine includes prayer, reading the Bible, checking on "inmates who are lower functioning" and writing in his journal or writing poetry. *Id.*; Exh. 19, (Knight) at 12.

Dr. Knight specifically evaluated "Bowman's risk of 'future dangerousness' or adaptability, if transferred from death row to SCDC's general population housing. Exh. 19 at 1. In conducting this evaluation, she "assessed pertinent historical factors; psychosocial and disciplinary functioning over his incarceration; mental health/medical status; and risk for future violence within a correctional setting." *Id.* Among other things, she interviewed Bowman and some of his family members and support network; "consult[ed] with evaluating and treating professionals"; and reviewed Bowman's "legal, academic, psychosocial, medical and correctional records." *Id.*

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[43] His prison records reflect "numerous citation[s] which demonstrate positive coping on Bowman's part." *Id.*

[44] Dr. Knight also noted that Bowman "copes through his writings" and drawings. Exh. 21 at 11.

Like Dr. Maddox, Dr. Knight found that Bowman has adapted well to confinement.

> [He] has had very few disciplinaries, all of minimal severity. He has a remote history of one minor assaultive infraction, at age 17, involving a fight with another inmate. He has kept very strong interpersonal relationships with family and others, and actively assists other inmates. He has heavily involved himself in spiritual and religious activities, through self-study of courses, and by meeting regularly with prison ministry staff.

Id. In conducting her Violence Risk Assessment, Dr. Knight noted:

> Mr. Bowman is of mature age; is clinically stable; has no substance use or violence over his incarceration; has excellent coping and interpersonal skills; and is heavily involved in prosocial pursuits. Such factors, in addition to an empirically validated risk measure, and assessment of known correlates to prison violence, indicate Mr. Bowman's risk of violence within a correctional setting is very low, with excellent adaptability to his environment.

Id.

Both Dr. Maddox and Dr. Knight also found a number of factors that contribute to Bowman's adaptability to confinement and his low risk of future violent behavior.

No Mental Illness and Average Intelligence

"Mr. Bowman has no history of mental illness. He is of average intelligence, with no cognitive disorder; and no personality disorder." Exh. 21 (Knight) at 1, 15; Exh. 19 (Maddox) at 7, 11-12. As Dr. Maddox explained, it is significant that "[t]here is no evidence he has any kind of cognitive disorder that would progress over time and change his cognitive capacity to adapt to incarceration." Exh. 19 at 14. Both experts also noted that it is also significant that Bowman does not abuse alcohol or other substances and has not touched either since his arrest in 2001. Exh. 19 at 14, Exh. 21 at 8.

Adaptability within SCDC

Both Dr. Maddox and Dr. Knight reviewed and discussed Bowman's incarceration records in their respective reports. Exh. 19, Maddox Report; Exh. 21 Knight Report. Dr. Maddox noted

generally that Bowman is respected by staff and other inmates. Exh. 19 at 14. Bowman was an Inmate Representative serving as a liaison between his fellow inmates and SCDC staff for twelve years (2008-2020). Exh. 21 at 3.

As Dr. Knight found, Bowman's SCDC records corroborate her findings, as well as Dr. Maddox's findings.

> *Collateral Data [SCDC Records]*: Due to his placement in death row housing, Mr. Bowman meets regularly with the unit counselor as a matter of protocol. Notes from these visits provide insight into his functioning. During the contacts, Mr. Bowman shares concerns about his family's wellbeing and the unit dynamics, discusses his interests and daily activities, and conversates easily with the counselor. The following notations by the counselor, from 2019 to 2022, are representative of Mr. Bowman's overall demeanor and functioning.
>
> Notes include multiple references to Mr. Bowman's *interpersonal functioning*, with the repeated documentation of "inmate relates well with staff and inmates." Additional notations include: "inmate discussed the importance of everybody getting along with each other…or maintaining some distance from difficult people;" "wants to communicate better…and not say the wrong thing;" "noted people can disagree about events in the news without being disagreeable;" "often observed playing cards and socializing with other inmates;" "was respectful toward other group members;" "he said the inmates look out for each other, encourage each other and discourage disruptive behavior;" "other inmates have been very helpful and supportive toward him;" and he "socializes with other inmates throughout the day…often talks to neighboring inmates."
>
> Notes include references to Mr. Bowman's *demeanor and character*, to include: repeatedly described as "calm" and "rational;" "positive and optimistic;" "he was very appreciative of my [counselor] efforts;" "thanked me several times for meeting with him;" "discussed an inmate he was concerned about;" "tries to set a positive example for other inmates;" "does take somewhat of a leadership role and sometimes counsels more impulsive inmates to think before they act;" "was very enthusiastic and positive that he was going to make some good changes;" "he discussed all the positive lessons he has learned over the years;" and "seems to examine situations with an open mind and sees various perspectives on the same news story." Specific to his work on the IRC, it was noted, "he advocated for two inmates on the restricted cell block to come to the unrestricted cell block…[he believed] it is the holiday season and it would great if one or both of them could have privileges restored before Christmas;" and Mr. Bowman "advocated for another inmate who is on the restricted side to stay on the restricted side."

> Notes also reflect his concern and attachment to his *family*, illustrated by the following: "He said he is very proud of his daughter;" "Inmate always asks about my family and my well-being. He seems to be genuinely concerned. I allowed inmate to call his father to check on him. He seemed very respectful and caring toward his father;" "Inmate has been wanting to get some sketches of rabbits so he could give his nieces and nephews Easter-themed pictures;" "wanting to color pictures to send to his nieces, nephews and children of friends;" and "was wearing a necklace with some tags…said the tags were for inspiration and had inspirational notes on them, one tag had his daughter's name on it."

Exh. 21 at 14.

The Chief SCDC Psychiatrist for Death Row, Robert Ellis, spoke to Dr. Maddox and Dr. Knight. Dr. Maddox noted that Bowman is known by Dr. Ellis as "the gentle giant" who "keeps the peace with his presence and calm demeanor." *Id.* at 11. Even though Bowman is no longer an inmate representative he continues to assist him by "persuad[ing] noncompliant mentally disordered offenders to cooperate with Dr. Ellis's treatment." Exh. 19 at 11. Dr. Knight reported that Bowman also talks to "a mentally ill inmate 'to get him out of his head because he hears voices;'" Exh. 21 at 11; he is assisting a new inmate "struggling with the new environment" to adapt to confinement, *id.* at 11; and he worked as an inmate representative, consistently working to assist other inmates, including getting two inmates moved from the restricted side of death row to the open side of the row for Christmas, Exh. 19 at 11.

Dr. Knight gave a more thorough summary of Dr. Ellis' statements:

> Dr. Robert Ellis, chief psychiatrist for death row, has known Mr. Bowman for the past five years. He confirmed he is not treating Mr. Bowman for a mental disorder, and does not prescribe him medication for psychiatric reasons. However, he speaks with him frequently, and is familiar with his functioning. He stated Mr. Bowman was previously the "head member of the IRC [Inmate Representative Council], he brought issues to the forefront" via communication with the prison administration, including the associate wardens. He described Mr. Bowman's work on the IRC as "excellent, proactive, he's a born leader, looks out for people, looks out for his fellow inmates, he's well respected from the staff's perspective, and he wants the community to get along." Several years ago, Mr. Bowman stepped down from the IRC, with Dr. Ellis noting, "it was his choice, he wanted to give someone else a

> turn, he wants to support and cultivate advocacy from his fellow inmates to take a role."
>
> Dr. Ellis has "never felt threatened" by Mr. Bowman, stating, "I've never seen him angry, he's nothing but personable. I feel very comfortable sitting down with him. I've never wanted a CO present." He "would have no concerns if he went to the yard, no threat, if anything, he would be an asset to others" referencing the GP [General Population] inmates. He stated Mr. Bowman has a "calming presence" and has "been invaluable in helping me with people who are non-compliant." Mr. Bowman will quietly speak with the mentally ill inmates who are not taking their medication, and is able to assist them with compliance. Dr. Ellis noted "he is sensitive to their perspective." Dr. Ellis described Mr. Bowman as possibly the "most respected" inmate on death row. He "is calming, speaks in a low tone, clear-headed, he's persuasive in a very mature way, can be very cool when talking about troubling things." He "has interpersonal skills and leadership ability, no psychopathic traits, he thinks thing[s] through…he's a very different man than the boy who came in many years ago." Dr. Ellis believes if there was ever a situation on death row, "I feel like Mr. Bowman would protect me, he would not want a bad situation to happen, in his home."
>
> Of note, prior to the consult, Dr. Ellis checked with the unit staff, including the Associate Warden, to ensure he was representing a consensus with his opinions. He stated "no one was apprehensive" and that he spoke for all who worked with Mr. Bowman.

Exh. 21 at 13. Former SCDC Officers and staff gave similar information.

Former death row Nurse David Chudd, R.N. was also interviewed by Dr. Knight and Dr. Maddox.

> He treated and interacted with Mr. Bowman for approximately five and one half years, from 2017 to July 2022, when death row transitioned to Kirkland CI and then again to Broad River CI. . . . [He] was very familiar with Mr. Bowman. He "always had pleasant interactions" with Mr. Bowman, and held a "positive opinion" about him. He believed Mr. Bowman "always tried to be helpful, and he had a calming influence on the unit, with the other guys." Mr. Chudd observed Mr. Bowman to "always have a positive attitude and willing to put the work in" to solve a problem. He also referenced Mr. Bowman's work on the IRC, in that "a lot of the other inmates would bring him concerns, he was very eloquent, and he kept the peace with the other inmates." . . .
>
> Mr. Chudd also directly observed Mr. Bowman's ability "work through things, and deal with things" in an effective manner. He "has seen Mr. Bowman face physical and psychological challenges, and put in the work" to improve. He cited Mr.

> Bowman's serious back condition, after which he "didn't give up, was positive, put in a lot of work to rehab himself."
>
> Overall, he "enjoyed dealing with Mr. Bowman, we had interesting conversation, he has a perspective I don't have. He was helpful in keeping the peace on the unit, he has a strong penchant for stepping up and keeping everyone stable, and taking on a peacemaking role…he was well received by the other inmates." He "never felt uncomfortable or threatened in any way" by Mr. Bowman and was "more at ease" when meeting with Mr. Bowman, than some of the other inmates. He believes Mr. Bowman would be able to "thrive and survive" in GP [General Population] as long as he is stepped down appropriately, from the environment on death row (close custody) to the more open environment of GP.

Exh. 21 at 13-14.

Former Associate Warden Ralph Hunter, who worked at SCDC from 1995 to 2011 and oversaw death row at Lieber Correctional Institution from 2009-2011, He stated:

> As an associate warden, I did not always interact with the death row inmates on a day-to-day basis, but I did develop professional relationships with some of the inmates. Marion Bowman was one of those inmates who I had a professional relationship with over the years. If I ran into Marion again, I would be excited to see him and would want to give him a hug.
>
> I made Marion a dorm keeper, which was a job where the inmate is allowed out of his cell to sweep, clean the shower, and collect the food trays. Death row was mostly locked down and all the inmates wanted out of their eells, so the job was coveted. Getting the job was a privilege and Marion Bowman earned the trust to be assigned the job.
>
> As a dorm keeper, Marion worked hard. He was always jovial. Not one person expressed concern about Marion being out of his cell. Even though Marion was a big man, no one was concerned about him causing trouble. Rather than cause trouble, Marion would help the officers interact with the inmates and explain the context of inmate concerns.
>
> While I was associate warden, I offered a character class to the officers and even the death row inmates to try to motivate people to model good behavior. The class only lasted for 2-3 months but Marion took the class and did well in it.
>
> Marion's behavior was already that of a model inmate before he took the class, but he always welcomed any means of filling his time constructively. He adjusted well to prison and helped others to adjust, as well. Marion was low key, easy going, and likeable by staff and inmates alike.

> Marion was selected to be a part of the Inmate Representative Committee (IRC). The purpose of the IRC was for the prison staff and the inmates to have an open line of communication about issues like safety, food, interactions with staff members, and conditions of the prison, among other issues. As a member of IRC, Marion was reasonable, fair, and someone I could trust.
>
> ****
>
> I support a conversion or commutation of Marion's sentence to a life sentence.

Exh. 23, Ralph Hunter Affidavit. Warden Hunter gave similar information in his interview by Dr. Knight. Exh. 21 at 6-7.

Former SCDC Lt. Darryl McGhee retired in 2018. He was a Lieutenant and worked on death row at Lieber for five years.

> I got to know all of the guys on death row during my 12-bour shifts. Marion Bowman was a nice, quiet guy, who liked playing basketball. Marion was no trouble. He followed the rules and got along with everyone. Marion also had a job cleaning up on the row.

Exh. 24, Darryl McGee Affidavit.

Per Dr. Knight:

> Former SCDC Officer Eddie Berry worked at SCDC from 2009 to 2014, spending two of those years on death row. He recalled Mr. Bowman well, stating he was “no trouble,” and did not remember any rule violations or disciplinary infractions associated with Mr. Bowman. He described Mr. Bowman as “very social,” having positive relationships with the other inmates, and with the officers. He recalled Mr. Bowman speaking about the Bible, as well as sports, and that he would “laugh and joke” in a good natured manner during their contacts.
>
> Former SCDC Warden Stan Burtt retired from SCDC in 2008. He “remembered that Marion was no trouble” and had no “memory” about an [alleged] escape attempt.
>
> Former SCDC Deputy Warden Vaughn Jackson recalled Mr. Bowman as a “model inmate,” with good behavior. He also recalled Mr. Bowman as an “inmate rep” and a “leader on death row” who did a good job, and who would “probably do fine in general population.” Former SCDC Major Fred Thompson worked at SCDC from 1970 to 2017. He recalled Mr. Bowman “didn’t give him any trouble.” He did not recall any [alleged] escape attempt from 2007, and did not recall Mr. Bowman

> associated with any escape attempt. He believes Mr. Bowman would do "fine" in general population.

Exh. 21 at 7. *See also* Exh. 38, Kimberly Fuhrmeister Affidavit (describing Vaughn Jackson interview); Exh. 39, Stacy Ferraro Affidavit (describing Eddie Berry interview); Exh. 40, Stacy Ferraro Affidavit (describing Stanley Burtt Jr. interview).

Family Stability & Support

> Dr. Maddox noted that Bowman has excellent family support. Exh. 19 at 7.
>
> Mr. Bowman married Dorothy Mae Williams (Dot) on 12/6/99. He was 19 and she was 23. They remain married and in communication and share a daughter Marissa. Marion Jr. and Marissa talk regularly. She also visits him. . . .
>
> Mr. Bowman has excellent family support. He speaks with his cousin, daughter, mother, father and aunt regularly. He continues to have visits from his mother and sister, Kendra. He reported he continues to speak with his father.

Id. Likewise, Dr. Knight noted that Bowman keeps very "close relationships" with family members and some of his prior attorneys. Exh. 21 at 8; Exh. 16, Jim Brown Affidavit at 1–2; Ex. 37 Shannon Brown Affidavit. Dr. Knight interviewed some of these collateral sources and they and additional family members provided affidavits for this Court's review.

Bowman's daughter Marissa spoke to Dr. Knight. As Dr. Knight summarized Marissa's interview:

> She described her father as "outgoing, sweet, loving, caring, honest, he will give you his honest opinion." During her childhood, Mr. Bowman, "made sure we had Christmas every year, gave our names to the Angel Tree, he does try…" When asked what she and Mr. Bowman discuss in their daily phone calls, she stated, "school, he's real big on school, big on me getting my education, wants me to go to college, he keeps me on the right path." He "tells me to stay out of trouble, stay away from people who are no good…we talk about a lot of stuff, he makes sure I'm alright with my mom, she has brain cancer, and he tells me not to look at every situation as a negative situation." She has a "great bond with dad, even though he's in prison, we got a bond, he's spiritually here, virtually, I feel real close to him…when I get depressed and upset and he talks to me, he calls to make sure I'm not depressed."

> He has also "sent me a Bible, helps me study the Bible, sent me a Bible with his name on it, put little notes in there. He is very spiritual, and he's an active dad, he's just not here physically, but he's active, I really appreciate him and love him very much."

Exh. 21 at 8-9. Marissa also provided an affidavit. She has "a very strong bond that I know most people with incarcerated dads don't have." Exh. 25, Marissa Bowman Affidavit at 1. "Growing up, [she has] strong memories of [her] dad always reminding [her] that doing well in school was totally up to [her] and that is where [she] should focus [her] efforts." *Id.* at 2. Marissa attributes successfully completing high school and college courses to her father's support. *Id.*

Bowman's mother, Dorothy Denise Bowman, also spoke with Dr. Knight and provided an affidavit. As Dr. Knight noted, Bowman calls his mother every day to check on her. He prays with her and tells her "scriptures to read" and also "quotes them from memory" to her. Exh. 21 at 9. Bowman's mother has relied on him since he was a child. Exh. 26, Dorothy Bowman Affidavit at 3. Incarceration has not prevented Bowman from providing support to his mother and other family members.

> Marion is someone who constantly uplifts everyone in our family. He sends cards and letters for the holidays. He has developed an impressive talent for art and is always sending us beautiful drawings with positive images to make us smile. He makes sure to remind us of when we have follow-up doctors' appointments and reminds us that we need to get flu and COVID vaccinations in order to protect ourselves. He does whatever he can to make sure that we can live long and happy lives. I do not know what I would do without his love and support.

Id. at 2.

Marion Bowman, Sr., Bowman's father, who has colon cancer and fears he does "not have long to live," Exh. 27, Marion Bowman, Sr., Affidavit, also spoke with Dr. Knight, Exh. 21 at 9, and provided an affidavit, Exh. 27. He has been supported by Bowman throughout his cancer diagnosis and states "[w]e all need somebody to lean on and Marion would be that person for me. He is always encouraging me not to give up, to stay strong." *Id.*

Quanisha Clark, Bowman's maternal cousin who was just four years old when Bowman went to jail, also spoke to Dr. Knight and provided an affidavit. Exh. 21 at 9; Exh. 28, Quanisha Clark Affidavit. She has developed a strong supportive relationship with Bowman over the last four years. Exh. 21 at 9. Clark struggles with "anxiety around people" and Bowman helps to calm her and reassures her. *Id.* He supports and encourages her in life and her career. *Id.* She describes him as having a strong belief in God that he shares with her by reading scripture and praying together. *Id.*

Other family members have also submitted affidavits on Bowman's behalf. Maternal aunt, Lorraine Johnson, describes Bowman as someone who is "always trying to uplift you. . . he is always asking about everyone else and encouraging them to be upbeat." Exh. 29, Lorraine Johnson Affidavit at 1. Marion provides his mother with a lot of support. . ." *Id.* Marissa, Bowman's daughter, recently gave birth to Bowman's granddaughter.[45] *Id.* Marissa is "very close with her father." Johnson described Bowman's close relationship with his daughter:

> Marissa relies on Marion a lot and frequently goes to him when she needs to talk through the things that happen in her life. Despite his incarceration, they have maintained a close father daughter relationship. Marissa visits her father regularly and he helps her maintain her mental health through those visits."

Id.

Francis Bruce, Bowman's maternal aunt, states that Bowman "still plays an important role in our family. He is always calling around to check on everyone." Exh. 31, Francis Bruce Affidavit, at 1. Frances has seen change in Marion and knows that religion is very important to him.

[45] Bowman has several other grandchildren through his stepsons that he has also treated and thought of as his own. Exh. 30, Dorothy Bowman Affidavit, at 1.

> Marion has changed for the better. I know that religion has become really important to Marion. He participates in the prison ministry and has talked to me about how God and religion gives him hope.[46] We always talk about the Lord together.

Id.

Yolanda Brown, Bowman's younger sister, who was coerced by the state to testify against him,[47] states that the family "need[s] Marion around as a male father figure. Even though Marion has never had the opportunity to meet my children, he has been influential in their lives." Exh. 32, Yolanda Bowman Affidavit at 1. Although they are now grown, her children always get excited to talk to Bowman on the phone. *Id.* Bowman always encouraged the children to do the right thing, go to school, continue their education, "and stay away from bad influences." *Id.* Yolanda has noticed that Bowman's attitude has changed a lot since he was confined in 2001. *Id.* at 2. He is a better person and more family oriented. *Id.* He also "talks about praying and the Lord all the time." *Id.* at 2. He even ends phone calls with "stay prayed up, keep your head up." *Id.* Yolanda has also noticed the effort that Bowman "has put into developing as a person and his dedication to continuing to learn and grow. His communication skills and vocabulary have improved so much over the years." *Id*.[48]

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[46] Notably, Bowman even frequently quotes the South Carolina motto "Dum Spiro Spero" which is on the State Seal and means "While I Breathe I Hope." *See* https://www.scstatehouse.gov/studentpage/coolstuff/seal.shtml#:~:text=The%20State's%20two%20mottos%20surround,While%20I%20Breathe%20I%20Hope (last visited December 15, 2024).

[47] In the Solicitor's Investigation Interviews Needed Memo, Exh. 1, the Solicitor noted, with reference to Yolanda, "May need to threaten her and mother with prosecutions to get statement," and that is exactly what happened as she testified pursuant to a plea agreement. App. 3735.

[48] As discussed below, Yolanda's observation about Bowman's improvement in learning, vocabulary, and communication skills has actually been confirmed by recent expert evaluations. Exh. 21, Knight Report, at 15.

Lena Clark, Bowman's second cousin and Quanisha's mother, writes Bowman and talks on the phone with him regularly. Exh. 33, Lena Clark Affidavit, at 1. "When we talk he often shares verses that he has read in the Bible and mentions how important God is to him." *Id.*

Religious/Spiritual

As noted by a number of family members, Bowman is very religious and spiritual. The experts noted, as part of finding his adaptability to confinement, that his daily routine includes prayer and reading the Bible. Exh. 19 (Maddox) at 10; Exh. 21 (Knight) at 10. His coping method of writing in his journal and writing poetry is also "spiritual in nature." *Id.* at 12. "He often cites scripture or references God, and details his gratitude, praise and relationship with God." *Id.* Dr. Knight also found that "[h]e is heavily involved in Bible study with volunteer chaplains. He 'reads the prayer or scripture of the day on the tablet' and reads inspirational spiritual material." *Id.* In addition to his activities in his alone time, with his family, and with volunteer prison ministers, Bowman has been involved long term with Christian Activities on death row and has completed "'course after course,' through various religious organizations." Exh. 21 at 10; *id.* at 11 (listing certificates received).

Three of those ministers spoke with Dr. Knight. Minister Gordon Manning, who visited death row between 2011 and 2016, told Dr. Knight that Bowman is "a delight of a person that Manning "befriended" and enjoys talking to. Exh. 21. At 10. Bowman is "eager, enthusiastic to learn" and "worked hard to complete Bible courses." *Id.* Bowman is a "spiritual guy" who inspires Manning with his "good spirit" and friendly nature. *Id.*

> Whenever I see Marion, he always jumps up and comes to the door eager to speak with me. We talk about the Bible, his life, and his workouts. He is always excited about reading and learning. Despite being on death row, Marion never appears to be angry or depressed, which differentiates him from the other men on the row.

> Marion stands out amongst his peers. While others tend to have a negative outlook when it comes to prison, Marion has always been a positive person. It is easy to connect with Marion and I always look forward to seeing him.
>
> Marion is a good guy. He is well behaved and kind to others. It is apparent to me that Marion is very proud of all of his accomplishments. He skips to his desk in order to get his work for our Bible Study sessions and then skips back to the door in order to share his work with me.

Exh. 34, Gordon Manning Affidavit.

Minister Larry Tyree, who has been a volunteer chaplain on death row and has been meeting with Mr. Bowman for 20 years, described Bowman to Dr. Knight as "affable, easy to talk to, we've become good friends." Exh. 21 (Knight) at 10.

> Early in Mr. Bowman's incarceration, Mr. Tyree established a book program on death row, "to make sure they were reading something of substance." He stated Mr. Bowman was very responsive to this program. Mr. Tyree saw "a radical change" in him, "Marion was reading a lot, he was enjoying what he was reading." Mr. Bowman appeared committed to learning new things, educating himself, and expanding his knowledge and viewpoint through the book program. Mr. Tyree also leads regular Bible study on death row "every other week." He described Mr. Bowman as committed and participatory, "asking lots of questions." Mr. Bowman "likes to be challenged," enjoys learning and "nothing is left unspoken."
>
> Mr. Tyree also observed that Mr. Bowman is "completely adjusted to prison" in that he "is a shadow of the man he was before prison." He "is good, and decent, gets along with everyone very well, and is focused." . . . He also "tries to see the positive and is very optimistic." Mr. Tyree gave the example of Mr. Bowman finding inspirational or spiritual quotes on the wall of every cell he has been in, as a means of "seeing the positive."

Id. Tyree also provided an affidavit adding: "I really enjoy talking to Marion. He is one of the funniest people I know. We talk about just everything without secrets." Exh. 35, Larry Tyree Affidavit, at 1.

> I consider Marion to be a good friend and a good person. He likes to talk about basketball and just about everything going on in his life. Marion is the first person to step in to break up a fight.
>
> I whole heartedly support a conversion or commutation of Mr. Bowman's sentence to a life sentence.

Id.

Bob McAlister, President of McAlister Communications and former Chief of Staff for Governor Carroll Campbell,[49] also spoke with Dr. Knight and provided an affidavit.

> Bob McAlister has had a death row ministry "on and off for the past 35 years." He has been working with Mr. Bowman since 2018 or 2019, after resuming his ministry. He is on death row "every other week" conducting Bible study, and religious discussions, as well as a "Christian worship service." He stated Mr. Bowman is "always there, every time, he's very quiet, and respectful, he doesn't complain about his plight, he's very polite." He believes Mr. Bowman is "dedicated to Christ, a born again Christian" who is "absolutely!" sincere and genuine in his beliefs. Given his many years of working in corrections, Mr. McAlister was asked if he saw any concerns with Mr. Bowman, should he be transferred to general population [GP]. He stated, "no risk at all, none whatsoever, and I would go so far as to say that if he had the right infrastructure on the street, he would not be a risk to society, but certainly no risk in GP." He sees characteristics in Mr. Bowman that would lend himself to "be successful" in a GP setting, such as Mr. Bowman's humbleness, politeness, quiet nature, and pleasant demeanor.

Exh. 21 (Knight) at 11. Some of this same information was included in McAlister's Affidavit.

Exh. 36, Bob McAlister Affidavit, at 1. Additional information in the affidavit reflects:

> Mr. Bowman is very dedicated to the worship service and is an active participant. He often leads us in singing at the end of the service. I regularly ask him to close the service by singing Amazing Grace.
>
> Talking to Mr. Bowman is like talking to anyone outside the Department of Corrections. I have not detected any major psychiatric problems or issues in my interactions with him.
>
> I do not believe Mr. Bowman would be a risk if he were transferred to the general population. I would go so far as to say that, if he had the right infrastructure on the street, he would not be a risk to society, but certainly no risk in the Department of Corrections general population. In fact, Mr. Bowman is one of the few people I've met in the Department of Corrections who, if he were released, I would invite over to spend time with my family.
>
> ****

[49] https://www.mcalistercommunications.com/team/ (last visited December 15, 2024).

> Overall, I would describe Mr. Bowman as a humble, sweet man. I believe he has characteristics that would lead to Mr. Bowman being successful in a general population setting, including humbleness, politeness, a quiet nature, and a pleasant demeanor.
>
> I support a conversion or commutation of Mr. Bowman's sentence to a life sentence.

Id.

Continuous Self-Improvement

Prior to his trial in 2002, Bowman's IQ testing fell in the "'low average' range of intellectual functioning" and neuropsychological testing was also mostly average "without obvious deficit[s]." Exh. 21 (Knight) at 15. Testing in 2022 by Joette James, Ph.D., revealed that Bowman's "overall intellectual functioning" now is "essentially 'average.'" *Id.* His language skills are now "great." *Id.* "Dr. James further noted that Mr. Bowman had improved his academic skills over time, in comparison to his testing from twenty-one years ago." *Id.* Test scores from 2002 compared with testing in 2022, indicated great improvement, which "is likely due to Mr. Bowman's heavy involvement in reading and writing over the years, both through his biblical studies, and through his own writings." *Id.* Bowman's sister also noted Bowman's work for improvement. Exh. 32 at 2.

iii. Conclusion.

As Dr. Knight found after full evaluation, "Mr. Bowman is at significantly low risk for future violence in a prison setting, with proven adaptability. Exh. 21 at 23, 21. His overall course of incarceration to date reflects his adaptability to confinement and his lack of violence.

> During his incarceration, Mr. Bowman has had very few disciplinaries, all of minimal severity. He has a remote history of one minor assaultive infraction, during a prior incarceration at age 17, involving a fight with another inmate. There were no injuries, or weapons used. He has maintained very strong interpersonal relationships with family and others, through daily calls, letters and in-person visits. For 12 years, he served on the Inmate Representative Counsel, acting as liaison between the administration and death row inmates. The Associate Warden who chose him for the

> "IRC" described him as "instrumental" in this role, by effecting positive change. He has heavily involved himself in spiritual and religious activities, through self-study courses, and by meeting regularly with prison ministry staff.

Exh. 21 at 22.

While much of this evidence was not available during trial and sentencing, again, it should be considered by this Court in determining whether Bowman's death sentence is "shocking to the conscience" and should be commuted to a life sentence or whether the death sentence should be affirmed by this Court and carried out despite the constitutional violations in the case and the 22 years Bowman has spent on death row, which is more than half of his life. Enough is enough. Even assuming this Court does not find reversible error under a pure *Brady* or *Strickland* analysis, Bowman's death sentence should be commuted to life imprisonment without parole.

CONCLUSION

Bowman faces execution based on trial and sentencing proceedings rendered unreliable because of the State's withholding of evidence impeaching the credibility of the main witnesses against Bowman and his own trial counsel's insertion of racist attitudes into the proceedings. The sentencing determination is further undermined because it is excessive in light of the evidence of Bowman's character and growth in the 22 years since his sentencing. This Court is the last judicial protection against such an unjust outcome and should grant the writ of habeas corpus and remand for a new trial or sentencing hearing. Bowman believes oral argument would be beneficial due to the complex nature of these issues, and he respectfully requests that the Court schedule the case for oral argument.

[*Signature block appears on the next page.*]

Respectfully submitted,

s/ Lindsey S. Vann

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December 16, 2024

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

Appellate Case No. _____

MARION BOWMAN, JR., SK #6006,

Petitioner,

v.

BRYAN P. STIRLING, Commissioner, South Carolina Department of Corrections,

Respondent.

EXHIBITS TO PETITION FOR A WRIT OF HABEAS CORPUS

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Exhibits to Petition for Writ of Habeas Corpus

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INTERVIEWS NEEDED

HIRAM JOHNSON:

Who was present at Allen Murray's club and burning of the auto?

YOLANDA BOWMAN:

Bowman's threat to kill victim while sitting in her car.

Did she see pistol on Bowman on the 16th?

Where is the pistol now?

(May need to threaten her and mother with prosecution to get statement)

JAMES GADSON, SR:

Who instructed him to buy gloves at EZ Shop?

Who was in the car?

FRANKIE MARVIN:

Was with Bowman and victim earlier that day, according to Bowman.

Did Bowman say anything to him about his intentions?

HANK KOGER:

Did he see Bowman with gun that night?

Did Bowman say anything to him about his intentions?

JOE FOGLE:

Did he see Bowman with gun that night?

Did Bowman say anything to him about his intentions?

MEKA (last name unknown - lives in Apt. 10):

Who fired the pistol earlier in the project?

Did Gadson spend the entire night with her or did he go to the club?

VAMETRA GADSON:

What is the boyfriend's name that Bowman offered to sell the 380 to?

(INTERVIEW BOYFRIEND)

KENDRA BOWMAN:

Did she go to Dorothy Bowman's house, remove the gun from a chair, and give it to her father?

(May need to threaten her, mother, and father with prosecution)

KATRINA WEST:

Did Kendra Bowman tell her that she got gun from Dorothy Bowman's house and gave it to her father?

Exhibit 2

RECEIVED
APR 30 2014
S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County
James E. Lockemy, Circuit Court Judge

MARION BOWMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213468

AMENDED PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

1.

Whether trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Taiwan Gadson and by failing to impeach the testimony of Taiwan Gadson in any meaningful way, including, but not limited to, the fact that the state threatened Gadson with the death penalty in his plea agreement, how Gadson's prior inconsistent statements showed that his story changed, and the fact Gadson had access to the murder weapon?

2.

Whether trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Travis Felder and by failing to impeach the testimony of Travis Felder in any meaningful way, including impeaching Felder with a videotape that would have shown Felder lied to the jury about buying the gas to burn the decedent's car, impeaching Felder on bias with his original charges, and impeaching Felder with his prior inconsistent statements?

3.

Whether trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment Hiram Johnson and by failing to impeach the testimony of Hiram Johnson by cross-examining Johnson on his prior inconsistent statement which, critically, did not include his allegation at trial that petitioner confessed to the murder?

4.

Whether petitioner is entitled to a new trial because the state withheld information necessary for impeachment and necessary for defense in violation of petitioner's due process rights under the Fourteenth Amendment and under the rules of discovery, those items being a memorandum of a law enforcement interview with Ricky Davis who heard Gadson confess to the murder, Gadson's mental health evaluation, and the fact that Hiram Johnson had unindicted pending charges at the time of his testimony?

5.

Whether trial counsel rendered ineffective assistance of counsel because counsel had a conflict of interest between two of her clients -- Petitioner Bowman and Ricky Davis --that caused counsel to fail to call Ricky Davis as a witness, despite Davis' statement that exculpated Petitioner Bowman and established Gadson shot the victim?

6.

Whether defense counsel was ineffective for failing to object to the solicitor's examination of James Aiken regarding favorable prison conditions and recreational facilities available to inmates since this Court had long ago in *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984), held such evidence was impermissible because it did not relate to the character of the defendant or the nature of his crime. This evidence was highly prejudicial in the eyes of the jury, and the failure to object to it properly at trial also barred consideration of this winning issue on petitioner's direct appeal?

7.

Whether petitioner's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under state law were violated because the trial judge failed to properly consider his application as evidenced by the PCR court's wholesale adoption of the state's proposed order?

STATEMENT OF FACTS

The state's key witnesses against Petitioner Marion Bowman at trial were James Gadson, Travis Felder and Hiram Johnson. Superficially, the case presented through these witnesses by the solicitor appeared rather straightforward. As will be seen infra powerful impeaching evidence against each of these three witnesses existed that defense counsel did not use because of incompetence or because the solicitor withheld impeaching evidence from them.

The state's theory at trial was that petitioner and the decedent, Kandee Martin[1], were friends. Gadson testified that on the day decedent was shot he had been drinking gin for most of the day, and he was "feeling in good shape." App. 3992, l. 11 – 3993, l. 25. Gadson said he was with petitioner and the decedent that evening. The decedent was driving. They went to the Horizon E-Z shop where they pumped gas, and then drove away without paying. App. 3994, l. 3 – 3995, l. 2.

Gadson claimed petitioner told the decedent where to drive and that she drove onto Nursery Road. "She stopped, cut the car off, cut the lights off, we got out." App. 3995, ll. 3-21.

Gadson maintained petitioner walked away from the car and that petitioner said he was going to kill the decedent "because she was wearing a wire." App. 3998, l. 4 – 3999, l. 3. Gadson testified that a car drove by and they "jumped in the woods." App. 3999, ll. 16-21.

After the vehicle passed by, the decedent started walking back to the car and petitioner followed her. Gadson claimed he heard a gunshot and saw the decedent running back towards him. Gadson claimed petitioner shot at the decedent two times and "she fell to the ground," then petitioner dragged her body into the woods. App. 4001, l. 5 – 4012, l. 24.

---

[1] Kandee is also spelled "Candee" in other places in the record. For ease of reference she is consistently referred to as "Kandee."

Later that night Gadson went to the Allen Murray Club with petitioner, Hiram Johnson, and another man in the decedent's car. Hiram Johnson would later testify that petitioner was trying to sell the decedent's car at the Allen Murray Club late that night. App. 4017, l. 4 – 4018, l. 17; App. 4067, ll. 3-20.

The state presented evidence that Travis Felder was with petitioner when petitioner burned the decedent's car. Felder claimed that petitioner came to the Villa Apartments and told him "I need to park this car." Felder testified that he only followed petitioner while petitioner drove the decedent's automobile to Nursery Road. App. 4092, l. 6 – 4096, l. 19.

Felder maintained when they arrived at Nursery Road, petitioner pulled the decedent's dead body out of the woods, put it in the trunk, and set the car on fire. App. 4096, l. 13 – 4100, l. 14.

Hiram Johnson's role during the trial was to testify that petitioner was trying to sell the decedent's car that evening, and that on the way back from the Allen Murray Club petitioner told him: "I killed Kandee, heh, heh, heh." Johnson claimed petitioner had a gun in his lap at the time. App. 4067, l. 25 – 4068, l. 18.

Marva Hardee-Thomas, ("Thomas") who is presently suspended from the practice of law by this Court, represented petitioner along with Norbert Cummings ("Cummings"). Thomas later acknowledged during PCR that she did not know what the guilt phase strategy was, and she referred any questions about it to Cummings. As to the penalty phase strategy she again stated: "You're going to have to ask Mr. Cummings." App. 7307, l. 5 – 7308, l. 10; App. 7325, ll. 6-23. The defense's mitigation investigator and social work expert testified they had no idea what the strategy was for the penalty phase. App. 6962, ll. 3-7; App. 6786, ll. 7-23. Thomas even wrote a letter to the jail, while she was a Dorchester County Public Defender, stating petitioner could call the Public

Defender's Office collect between "8:45 - 9:00" "concerning his capital case" but she added "[h]e is not allowed to contact me on a daily basis." App. 9170.

At the time Thomas represented petitioner, as will be seen infra, she also had an attorney-client relationship with Ricky Davis. Davis wrote a statement in 2001 that Gadson had confessed to Davis that he killed the decedent. In this statement Davis said Gadson admitted or bragged: "[T]hat he was the one that shot the girl and gave Petitioner the gun that was used and he said it didn't matter because Black [petitioner's nickname] family had got caught with the gun [anyway]." App. 8966.

As will be seen infra, Thomas candidly admitted a conflict of interest existed in her representation of both petitioner and Davis. Thomas explained the dual representation had her "trying to help Mr. Bowman but not hurt my aspect with Mr. Davis because I still had an ethical responsibility with him also." App. 7330, l. 18 – 7333, l. 6.

The defense failed to call Davis as a witness during petitioner's trial even though Davis was brought to the courthouse. Thomas did not remember even discussing Ricky Davis with petitioner, much less detailing the former attorney-client relationship she had with Davis to petitioner. App. 7294, l. 11 – 7296, l. 18. As will also be seen infra, Davis, after leaving the jail and when he was away from petitioner and Gadson, gave an additional statement to Solicitor Bailey's investigator, Sam Richardson, in which Davis stated that Gadson confessed in jail to "killing a girl." Davis told Richardson that petitioner never admitted shooting anyone, but Davis said Gadson later went back on his confession and claimed Petitioner shot her. App. 9122.

This statement was not turned over to the defense prior to trial. Bailey first tried to claim this statement was subject to the "attorney-client privilege." He then attempted to characterize the Richardson memorandum as work product. App. 7860, l. 12 – 7879, l. 18.

Solicitor Bailey also admitted he did not provide the defense with Gadson's mental health evaluation, and trial counsel Cummings confirmed he never received it. This report stated that Gadson reported hearing "voices" and "a little beeping noise." The report also recorded the fact that Gadson's testing showed he had memory problems which was not unusual given his admission of smoking "six blunts of cannabis on a daily basis." App. 8960.

As seen above, Travis Felder testified during petitioner's trial that he went to the crime scene and saw petitioner pull the decedent's dead body out of the woods, put her body in the trunk, and set the decedent's car on fire. During the PCR hearing testimony was adduced to show that Cummings failed to impeach Felder's story at trial, and he also failed to impeach Felder with the fact that Felder faced and feared the death penalty if he violated his plea agreement at the time of his trial testimony. Cummings admitted he knew at the time Felder testified during the state's case-in-chief that Felder purchased gasoline alone at the E-Z shop prior to the decedent's car being set on fire. Cummings had watched the videotape of Felder purchasing the gasoline with petitioner. Yet he did not impeach Felder with this serious omission where Felder claimed he was just a bystander. App. 7017, l. 15 – 7021, l. 21.

After petitioner had been convicted of murder, Cummings called Felder as a witness during the sentencing phase, when guilt was no longer an issue, to testify that he did purchase the gasoline that evening. When Felder was asked why he did not tell the jury that fact earlier, he told the solicitor: "You didn't ask." App. 4925, ll. 17-25.

When Felder was interviewed by the police he denied any knowledge of the decedent's murder. App. 6381, l. 17 – 6384, l. 16. After Felder was charged with murder and arson in 2001, he hired Charles Williams as his attorney. During plea negotiations, Felder's attorney sent a proffer letter to Solicitor Bailey. The proffer letter omitted both the fact that Felder bought the gasoline that

evening, and his claim that he saw petitioner put the decedent's body in the trunk of the car. App. 6384, l. 25 – 6390, l. 6; App. 9118.

At the PCR hearing, Cummings testified that he did not find out about Felder "cutting a deal" until just before the trial. The plea agreement allowed the solicitor to reinstate all of Felder's charges and seek the maximum penalty [death], "*and the defendant hereby waives any objection to the state seeking of the maximum penalty*" if Felder did not tell the "absolute truth." App. 8971. (emphasis added). Cummings apologized at PCR for not cross-examining Felder on the issue of Felder of his sentencing exposure of death or life imprisonment, particularly where Felder never even went to prison. App. 7029, l. 10 – 7034, l. 25. Cummings also apologized for not impeaching Felder with his prior inconsistent statements and omissions. App. 7045, ll. 1-10.

As seen, Hiram Johnson testified at trial that petitioner confessed to him that he "killed Kandee, heh, heh, heh." However, the jury never learned Johnson was a biased witness because of his pending charges -- from the same solicitor's office – that were not disclosed by Solicitor Bailey. App. 4068, ll. 4-18. Further, at the PCR hearing it was revealed that nowhere in Hiram Johnson's earlier statement to Detective Coker on April 5, 2001, did he claim Petitioner said "I killed Kandee, heh, heh, heh." App. 9054. Johnson belatedly testified at PCR he thought petitioner was kidding when he said he killed the decedent, but he did not tell the jury during his testimony he thought petitioner was kidding. App. 6290, l. 10 – 6298, l. 10.

As will also be seen infra, Defense Counsel Cummings mistakenly thought that the penalty phase of petitioner's trial could focus on whether life imprisonment was really a harsh punishment or whether inmates lived rather relaxing lives in prison. Cummings reacted sarcastically when told that this Court had long held such evidence was improper: "Isn't that nice of them, but how else do

you argue about somebody having a chance to live in prison? I mean, I don't argue academically." App. 7449, l. 21 – 7450, l. 22.

When asked a question about the aggravating circumstance of kidnapping Cummings responded with a lecture to the petitioner:

> Mr. Cummings: I want to say this out loud and with Marion [present], what are you doing on Nursery Road at that time of the morning with a white female and African American males in Dorchester County? Really. This is 2001 but what good are you doing out there on a dirt road? Okay. And we have all the homeowners calling us saying they heard shots, then they come out and they find a burning car. So, that's the way this thing portrayed. The fire department comes out, as you know. I have read this file backward and forward. If he's there he's a principal, if he's in the car. If he's not there, how does all these facts get known, how are all these facts to be told?

App. 7126, ll. 7-25.

ARGUMENT

1.

Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Taiwan Gadson and by failing to impeach the testimony of Taiwan Gadson in any meaningful way, including, but not limited to, the fact that the state threatened Gadson with the death penalty in his plea agreement, how Gadson's prior inconsistent statements showed that his story changed, and the fact Gadson had access to the murder weapon.

Introduction

Taiwan Gadson ("Gadson") was the chief witness against petitioner at the trial. Gadson claimed that he witnessed petitioner shoot the decedent and drag her body into the woods. App. 4011, l. 20 – 4012, l. 2. Gadson's version of events went essentially unchallenged by the defense. The jury never heard that Gadson gave inconsistent statements to the police, that he had previously fired the pistol the state alleged was the murder weapon, and that Gadson was threatened with the death penalty. Had trial counsel not been ineffective and impeached Gadson with this information, there is a reasonable probability that Gadson would not have been believed and the outcome of the trial would have been different.

1. What the Jury Heard at Trial from Gadson

In order to understand the vast importance of any evidence that could be used to impeach Gadson, it is important to understand the centrality of his testimony to the state's case. Without Gadson, the state had very little evidence against petitioner.

At the time of his testimony, Gadson was twenty-three years old. App. 3980, ll. 8 – 9. He had lived in Branchville his whole life. App. 3980, ll. 12 – 13. He was in jail at the time of his

testimony. App. 3980, ll. 19 – 21. The state initially charged him with the decedent's murder. App. 3980, ll. 22 – 24.

Gadson testified that the first time he saw petitioner on the day of the murder was early that morning. App. 3983, ll. 13 – 16. Petitioner was in the car with his sister, Yolanda Bowman, on their way to a meat market in St. George. App. 3983, ll. 17 – 21. Gadson went with Yolanda Bowman and petitioner to the meat market. App. 3984, ll. 2 – 3. Afterwards, they returned to Branchville to petitioner's house. App. 3984, ll. 14 – 17. Petitioner came out of the house "with a little limp." App. 3984, ll. 18 – 25. Petitioner said he was walking that way because he had a gun in his pants and the gun was cold. App. 3985, ll. 1 – 9. Gadson saw the gun. App. 3985, ll. 10 – 12. Petitioner had a beer and a bag, took the beer out of the bag and put the gun in it. App. 3985, ll. 10 – 15.

Gadson claimed that he was with petitioner when petitioner purchased the gun. App. 3985, ll. 21 – 24. According to Gadson, petitioner purchased the gun approximately two weeks before the murder. App. 3986, ll. 1 – 3. The gun was a gray and black .380 High Point automatic pistol. App. 3986, ll. 6 – 8. Petitioner bought the gun from a "dude in Orangeburg." App. 3986, ll. 12 – 13. A gun, state's Exhibit 42, looked the same to Gadson as the one petitioner had on the day of the murder. App. 3987, ll. 5 – 10. Gadson never said anything about Felder being present when petitioner supposedly bought this gun. App. 3985, l. 19 – 3986, l. 25. Trial counsel failed to point out this inconsistency. App. 4101, ll. 9 – 15.

Yolanda Bowman then took them to the Villa Apartments in Branchville. App. 3987, ll. 11 – 25. They went to Hank Koger's house and started drinking. App. 3988, ll. 1 – 12. Gadson saw petitioner put his gun in a trash barrel. App. 3988, ll. 18 – 20. After petitioner returned from the store, petitioner started an argument with him about the gun. App. 3989, ll. 4 – 8. The

argument ended when Hiram Johnson retrieved the gun from nearby woods. App. 3989, ll. 16 – 20.

Gadson's claims about the gun at Hank Koger's house conflicted with the testimony of Hiram Johnson. Johnson testified that he hid the gun at Katrina West's house. App. 4060, ll. 5 – 8. Johnson testified that petitioner went to Katrina West's house, got his gun, and came back to Koger's house. App. 4060, ll. 12 – 19. Trial counsel failed to point out this inconsistency to the jury.

Gadson remained at Hank Koger's house. App. 3990, ll. 16 – 18. He next saw petitioner at approximately 7:30 PM. App. 3990, ll. 19 – 23. Petitioner was in the decedent's car. App. 3991, ll. 4 – 7. The decedent was driving. App. 3991, ll. 23 – 24. Gadson described her car as a "green Ford Escort." App. 3991, ll. 13 – 14. Petitioner supposedly called Gadson over and told him to get in the car. App. 3992, ll. 4 – 10. Gadson had been drinking gin and beer since 1:00 PM. App. 3992, l. 20 – 3993, l. 20. Gadson admitted he had drunk "a good little bit" of gin and "about five" beers. App. 3993, ll. 2 – 20. Gadson was intoxicated and "feeling in good shape." App. 3993, ll. 21 – 25.

Gadson got in the backseat of the decedent's car and they went to the Horizon EZ Shop. App. 3994, ll. 3 – 7. They stole some gasoline. App. 3994, ll. 8 – 11. They left the store and the decedent drove them down Highway 78. App. 3994, ll. 12 – 14. Petitioner was telling the decedent where to turn. App. 3994, ll. 19 – 24. They eventually made their way to Nursery Road where petitioner told her to turn around near a yellow road sign. App. 3995, ll. 7 – 15. The decedent stopped the car, turned off the ignition, turned off the lights, and they all got out of the car. App. 3995, ll. 18 – 21. Gadson later changed this version and said that it was only he and petitioner who got out of the car. App. 3997, ll. 17 – 19.

Gadson and petitioner walked down the road while the decedent stayed in the car. App. 3997, l. 20 – 3998, l. 3. On this walk, petitioner told Gadson "he was going to kill her because she was wearing a wire." App. 3998, ll. 4 – 7. The decedent came down the road and grabbed petitioner by his right arm and told him she was scared. App. 3998, ll. 14 – 17. A car came by and they "jumped off in the woods." App. 3999, ll. 11 – 13.

The decedent left the woods and started towards her car. App. 3999, l. 23 – 4000, l. 2. Petitioner followed the decedent down the road. App. 4000, ll. 5 – 9. Gadson stayed at the spot where they jumped into the woods. App. 4000, ll. 21 – 22. Gadson next saw "three fires come from a gun" and heard gunshots. App. 4001, ll. 5 – 13.

Gadson saw "[the decedent] come running down the road" towards him. App. 4002, ll. 4 – 11. The decedent stopped when she got close to Gadson then turned around to face petitioner. App. 4002, ll. 12 – 21. The decedent told petitioner, "Please, Black, don't shoot me no more, I have a child to take care of." App. 4011, ll. 16 – 19. Petitioner shot the decedent two times, she fell to the pavement, and petitioner dragged her in the woods. App. 4011, l. 20 – 4012, l. 2.

Gadson then "messed" his pants and got in the car. App. 4013, ll. 2 – 10. When petitioner got in the car, he said, "I shot that bitch in the head." App. 4013, ll. 21 – 23.

Petitioner drove them back to Branchville. App. 4014, ll. 5 – 24. Petitioner supposedly parked the decedent's car in a wooded area and then told Gadson he would blow his brains out if he told anyone what happened. App. 4015, ll. 3 – 11. Gadson got out of the car and went to Hank Koger's house. App. 4015, ll. 19 – 23. Petitioner got Yolanda Bowman's car and the two of them drove to the Horizon EZ Shop to get beer. App. 4016, ll. 2 – 15. They proceeded to the house of someone named "Fred." App. 4016, ll. 20 – 21. At Fred's house, they talked to Travis

Felder. App. 4016, ll. 22 – 25. They then returned to the Villa Apartments and Gadson went back to Hank Koger's house. App. 4016, l. 22 – 4017, l. 3.

Later that evening, Gadson saw petitioner and Hiram Johnson leaving in Yolanda Bowman's car. App. 4017, ll. 4 – 15. Gadson next saw petitioner again at the Villa Apartments just before they left to go to the Allen Murray Club. App. 4017, ll. 18 – 24. Gadson, Darian Williams, Hiram Johnson, and petitioner drove the decedent's car to the Allen Murray Club, with petitioner behind the wheel. App. 4018, ll. 3 – 10.

Once they got in the car, petitioner handed out four pairs of brown gloves. App. 4018, ll. 18 – 23. All four of them put on the gloves. App. 4019, ll. 6 – 8. They arrived at the Allen Murray Club at approximately midnight. App. 4019, ll. 18 – 20.

Gadson and Darian Williams went inside the club. App. 4019, l. 21 – 4020, l. 4. Hiram Johnson and petitioner stayed outside in the car. App. 4019, l. 24 – 4020, l. 1. Travis Felder was also in the club. App. 4020, ll. 5 – 6. They were inside the club for approximately one hour. App. 4020, ll. 7 – 8. When Gadson came out of the club, petitioner was still sitting in Yolanda Bowman's car. App. 4020, ll. 12 – 16. Gadson got in the backseat of Yolanda Bowman's car and lay down because he was drunk. App. 4020, l. 24 – 4021, l. 12. They left in the decedent's car with petitioner driving and Darian Williams and Hiram Johnson also as passengers. App. 4021, ll. 13 – 22. They returned to the Villa Apartments. App. 4021, l. 25 – 4022, l. 2. Gadson went to the apartment of a woman named "Meeka." App. 4022, ll. 3 – 4.

In an effort to reduce the sting of impeachment, the solicitor had Gadson admit on direct that he gave a false statement to police on February 18, 2001, in which he claimed he did not know anything. App. 4022, ll. 5 – 7. When asked why he provided a false statement, Gadson said it was because he was scared. App. 4022, ll. 12 – 13.

Cummings' cross-examination served only to confirm Gadson's direct testimony. He simply re-asked many of the same questions asked by the solicitor and received the same answers. App. 4021, l. 21 – 4038, l. 9. Excluding argument on a state's objection, trial counsel's cross-examination of the state's chief witness in a capital case only encompasses approximately ten pages in the trial transcript. App. 4021, l. 21 – 4038, l. 9. The main focus of Cummings' questions was the recentness of Gadson's plea deal and that in 2000, Gadson purchased a High Point .380 pistol that was black and gray just like the pistol the state entered into evidence as the purported murder weapon. App. 4031, ll. 5 – 11. Cummings also placed considerable emphasis on where Gadson claimed he was standing on Nursery Road, to no effect. App. 4036, l. 5 – 4037, l. 21.

2. What the Jury Did Not Hear Because of Trial Counsel's Ineffective Cross-Examination

a. The Jury Never Heard that Gadson Faced the Death Penalty

During the state's presentation, Gadson admitted that he had entered into a plea agreement. App. 3981, ll. 7 – 11. The solicitor had Gadson agree that he was charged with murder. App. 3980, ll. 22 – 24. Gadson testified that his understanding of the agreement was that he would be charged with "accessory after the fact and misprision of a felony." App. 3981, ll. 12 – 16. The solicitor asked him, "All right, sir. And are you going to get a negotiated sentence of twenty years for that?" to which Gadson responded, "Yes, sir." App. 3981, ll. 17 – 19.

Cummings failed to emphasize that Gadson was testifying to avoid the death penalty. Rather, Cummings only confirmed the false impression that Gadson did not face the death penalty. App. 4024, ll. 18 – 20. Cummings asked the leading question, "You were never served

the notice of death penalty on you at all, were, you?" App. 4024, ll. 18 – 20. Gadson replied, "No, sir." App. 4024, ll. 18 – 20.

The details of Gadson's plea agreement, which the jury never heard, required him to "truthfully cooperate" with the solicitor's office in petitioner's prosecution. App. 8945. He was required to give the solicitor's office a "complete debriefing." App. 8945. The plea agreement also required that in his testimony, Gadson was required to be truthful and was unable to "omit facts." App. 8947. Most critically, the plea agreement stated that if Gadson failed to cooperate in the investigation and prosecution of petitioner, "The state may, in its option, reinstate the murder charge and seek the death penalty against [Gadson] and [Gadson] hereby waives any objection to the state's seeking of the death penalty." App. 8946.

Gadson testified at the PCR hearing that he feared the death penalty. App. 5851, ll. 15 – 17. He knew that his agreement meant that he could get the death penalty and he was afraid of getting the death penalty. App. 5851, ll. 15 – 17. Gadson ultimately served less than five years in prison. App. 5937, ll. 13 – 15.

b. The Jury Never Heard the Details of Gadson's Inconsistent Statements

Trial counsel failed to explore in detail Gadson's prior inconsistent statements. All the jury heard was that Gadson denied knowing anything about the crime to police because he was "scared." App. 4022, ll. 12 – 13.

Gadson's first written statement was given to the police on February 18, 2001. App. 5861, l. 24 – 5862, l. 1. In his first statement, Gadson said that he was dropped off after petitioner and the decedent obtained gasoline without paying for it at the EZ Horizon store. App. 5862, ll. 2 – 5; App. 8950 – 8953. In the statement, he also talked about the disagreement he had with petitioner over the gun and claimed that petitioner found the gun in a brown paper bag

"over near the woods." App. 8951. This claim was directly contradicted by Hiram Johnson's testimony. App. 6296, ll. 1 – 10. Gadson's statement talks about an "old raggedy gun" and does not mention the grey and black .380 pistol allegedly bought from the "dude in Orangeburg." App. 8950. Gadson does not say that he saw the decedent get shot. App. 8950-51. He never said that he saw Travis Felder. App. 5862, ll. 9 – 11. He never said that he saw petitioner on Nursery Road or that petitioner threatened to blow his brains out. App. 5862, ll. 15 – 20.

Gadson admitted he lied in this statement. App. 5863, ll. 16 – 17.

Gadson also admitted being questioned by a police officer named Tim Stephenson. App. 5864, ll. 5 – 7. He admitted changing his story after speaking with Officer Stephenson. App. 5865, ll. 21 – 24. Gadson also admitted that he changed his story after being shown a warrant for his arrest for murder. App. 5867, ll. 11 – 14.

Later on February 18, 2001, Gadson gave a second written statement. App. 5868, ll. 12 – 15; App. 8954 – 8955. It was in this statement that he first claimed he saw petitioner shoot the decedent. App. 8955. The statement does not say that Gadson went to the Allen Murray club after the shooting. App. 5868, l. 23 – 5869, l. 1. It does not mention any threats from petitioner. App. 5869, ll. 8 – 10. Gadson admitted at the PCR hearing that the first time he claimed that petitioner had "threatened to blow his brains out" was during his testimony at trial. App. 5870, ll. 5 – 7. Gadson again admitted that he changed his story after signing the plea agreement. App. 5873, ll. 13 – 15. Gadson also stated in the PCR hearing that he lied in his statement about petitioner pointing a finger at the decedent as if he was going to shoot her. App. 5876, l. 23 – 5877, l. 7. He claimed, as he did at trial, that he did not know there was going to be a killing before he got to Nursery Road. App. 5877, ll. 2 – 7. Gadson stated that had he been asked those questions at trial he would have answered the same. App. 5879, ll. 5 – 14.

Officer Tim Stephenson testified that he ran a polygraph test on Gadson on February 18, 2001. App. 6486, ll. 6 – 12. Stephenson asked Gadson whether he shot the decedent and whether he was withholding any information about the shooting of the decedent. App. 8956. Gadson responded "no" to these questions. App. 6505, ll. 2 – 7. Stephenson's report indicated deception in Gadson's answers. App. 8956. While the polygraph results would not be admissible, Gadson's lie about withholding information would have served to impeach his credibility.

c. The Jury Never Heard that Gadson Fired the Murder Weapon

The jury never heard that Gadson fired the pistol the state contended was the murder weapon. Margaret Hawkins ("Hawkins") gave a statement to police on February 22, 2001. App. 9046. She said that she was in her apartment two weeks before the murder and heard four gunshots. She walked outside and picked up four shell casings and put them in her kitchen drawer. App. 9046. She turned the shell casings over to SLED. App. 9046. Tiara Coleman also gave a statement on February 22, 2001. She also stated that two weeks before the murder Gadson shot a gun given to him by petitioner into the air. App. 9047. She also stated that Gadson fired his own gun in the air. App. 9047. The shell casings left from this incident were the same ones turned over to SLED by Hawkins. App. 9046.

David Collins ("Collins") was the state's firearms expert at trial. Collins testified (and the state did not dispute) that the shell casings picked up by Hawkins were fired by the pistol retrieved from the Edisto River. App. 6085, l. 8 – 6095, l. 16; App. 9046. The state claimed that pistol was the murder weapon and shell casings from the crime scene were matched by Collins to the pistol at trial. The shell casings picked up by Hawkins were entered into evidence as Exhibit

46 and 49 at trial. App. 6090, l. 4 – 6092, l. 11. Cummings never told the jury that these casings came from shots fired by Gadson.

3. The PCR Court's Ruling

Petitioner raised the above grounds in his applications and in his post-hearing brief. App. 9467-76. The PCR Court denied petitioner's application on all of these issues. Supp. App. III 14-31. Regarding the failure to impeach Gadson with the fact that he had been threatened with the death penalty, the PCR court based its denial on the fact that the state never served a notice of intent to seek the death penalty. Supp. App. III 20. It also held that no evidence was presented that Gadson feared the death penalty and petitioner was not prejudiced because of the "overwhelming" evidence of petitioner's guilt. Supp. App. III 20-21.

As for Gadson's prior inconsistent statements and the fact that he fired the gun, the PCR court agreed with the facts presented by petitioner, but reached a different conclusion. Supp. App. III 29-30. The PCR court credited trial counsel with making a reasonable strategic decision in failing to present to the jury that the only other suspect had fired the murder weapon. Supp. App. III 30. The PCR court, as it did for virtually every ground raised by petitioner, also found no prejudice because of "overwhelming evidence" of petitioner's guilt. Supp. App. III 30.

4. Discussion

a. The PCR Court Erred in Finding that Gadson Was Not Threatened with the Death Penalty

The PCR court erred because it based its conclusion on an irrelevant concern: whether Gadson was served with a death notice. This finding ignores the incontrovertible language of Gadson's plea agreement that **explicitly threatens him with the death penalty**. App. 8946. The plea agreement's threat could not be any more clear. It states: "The state may, in its option, reinstate the murder charge and seek the death penalty against [Gadson] and [Gadson] hereby

waives any objection to the state's seeking of the death penalty." App. 8946. Not only did the state explicitly threaten him with the death penalty, it forced Gadson to waive any objection to the death penalty. App. 8946. This waiver is extraordinary and it is hard to imagine greater evidence of a witness's bias than the fact that he has waived the right to attempt to save his own life. Because of trial counsel's deficiency, the jury never heard this extraordinary fact.

The PCR court also erred in its finding that Gadson did not subjectively fear the death penalty. Gadson testified at the PCR hearing that he feared the death penalty. App. 5851, ll. 15 – 17. He knew that his agreement meant that he could get the death penalty and he was afraid of getting the death penalty. App. 5851, ll. 15 – 17.

Trial counsel's failure to impeach Gadson with the fact that he faced the death penalty constituted deficient performance that prejudiced petitioner. Strickland v. Washington, 466 U.S. 668, 686 (1984). When asked whether it would be important for the jury to know that Gadson faced the death penalty, Thomas offered the meager answer, "Could, but I'm not the jury." App. 7311, l. 14 – 7312, l. 14. Cummings was initially unsure whether he ever saw Gadson's plea agreement prior to trial. App. 7383, l. 11 – 7387, l. 21. If Cummings failed to cross-examine Gadson because he did not review the plea agreement, that would constitute deficient performance for failure to investigate and failure to prepare. Von Dohlen v. State, 360 S.C. 598, 608, 602 S.E.2d 738, 743 (2004). However, on cross-examination, Cummings agreed that Bailey said he provided him with a copy of the plea agreement based on a statement made by Bailey during the trial, but could not remember what date. App. 7635, ll. 2 – 7636, l. 23. Tellingly, the Attorney General did not ask Cummings the obvious follow-up question of whether Cummings ever read the plea agreement. App. 7636, l. 24 – 7640, l. 9.

The magnitude of this error is amplified by the fact that Gadson was threatened by the state for the death penalty when none of the state's evidence showed he would be eligible for such a sentence. Even though Gadson's plea agreement required him to provide complete and truthful testimony, nothing in his testimony indicated he could be convicted of murder. At best, Gadson's testimony showed that he was present at a crime scene with some knowledge that a crime might occur. Both Cummings and Solicitor Bailey agreed that Gadson's actual trial testimony could only form the basis of a conviction of misprision of a felony. App. 7389, ll. 1 – 11; App. 7018, ll. 3 – 25. This meant that the state threatened a witness with the death penalty without any evidentiary or legal basis.

Solicitor Bailey could not give specific details about what information he had that would support a murder charge against Gadson as a principal. App. 7816, l. 14 – 7817, l. 19. Bailey admitted that their knowledge of Gadson's actions only amounted to misprision. App. 7018, ll. 3 – 25. When asked what would merit death for Mr. Gadson, Bailey responded, "You're asking a hypothetical. I mean I don't know at this point or at that point in time." App. 7824, ll. 3 – 6. Nothing about PCR counsel's question was "hypothetical." The plea agreement drafted by Solicitor Bailey explicitly threatened Gadson with the death penalty. Neither Solicitor Bailey—nor the evidence as presented by the state at trial—supported such a drastic threat.

Had trial counsel informed the jury that the state was willing to threaten a witness with the death penalty when it was also telling them that Gadson had nothing to do with the crime, it would have impeached not only Gadson's credibility, but the state's entire presentation. Cummings agreed that it would impeach Gadson's credibility to show the state was threatening him with the death penalty, but that Gadson's actual trial testimony did not show he did anything

to merit such a threat. App. 7394, l. 25 – 7395, l. 4. Cummings admitted that was a threat to a witness. App. 7395, ll. 5 – 13. The following questioning occurred:

> Q. Okay. Why didn't you tell, cross-examine him about the fact that he faced a death sentence?
>
> A. You asked me that before. I cross-examined him, it was murder, I didn't know if the Solicitor had ever served the death penalty notice on him.
>
> Q. They threatened him with it?
>
> A. They threatened.
>
> Q. Why didn't you tell the jury he had been threatened with his life?
>
> A. I guess it didn't flow from my brain at that time, I'm sorry, no strategy, clearly.

App. 7724, ll. 1 – 11. Cummings admitted his performance was deficient and that he had no strategy in not impeaching both Gadson and the state with evidence of the state's baseless threat.

Petitioner was prejudiced by this failure. Had the jury known this vastly important fact, it would have shown the full extent of Gadson's bias. It would have shown that Gadson was motivated—literally to save his life—to please the state in his testimony. It also would have further impeached the state's case because it would have shown the lengths to which the state was willing to go to obtain favorable testimony. No evidence presented at trial supported a capital charge against Gadson, yet the state threatened him with the death penalty. Gadson's plea agreement required complete and truthful testimony, but nothing in his testimony supported a charge more serious than misprision of a felony. Had the jury heard this important evidence of bias by Gadson and witness intimidation by the state, the result at trial likely would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989).

b. Petitioner was Prejudiced by Trial Counsel's Failure to Impeach Gadson with his Prior Inconsistent Statements and Evidence He Fired the Murder Weapon

Cummings could not articulate any strategy as to why he did not impeach Gadson with his prior inconsistent statements, including his statements during the polygraph examination. App. 7492, l. 5 – 7493, l. 5; App. 7494, ll. 10 – 14. Cummings responded, defensively, "I didn't ask the question, okay?" App. 7494, ll. 10 – 14. Cummings' deficient performance prejudiced petitioner. The failure to impeach a witness with prior inconsistent statements is deficient performance that prejudices a defendant. Driscoll v. Delo, 71 F.3d 701, 710-11 (8th Cir. 1995); Berryman v. Morton, 100 F.3d 1089, 1097 (trial counsel failed to impeach with inconsistent eyewitness identifications). In Driscoll, defense counsel's failure to impeach an eyewitness with prior inconsistent statements was held prejudicial. Id. The defendant was sentenced to death for stabbing a prison guard. Trial counsel failed to impeach a prosecution witness who claimed at trial that the defendant confessed to the murder with a prior statement omitting the confession. Id. at 709-12. The centrality of the witness's testimony was an important factor in the court's consideration. Id. Here, Gadson was the central witness in the trial and failure to impeach his testimony could not have been more prejudicial. See also Peebles v. State, 958 S.W.2d 533, 536-37 (Ark. 1998) (holding that defendant was prejudiced by trial counsel's failure to impeach a witness with a prior denial that a crime occurred); Delarosa v. State, 24 So.3d 741, 741-42 (Fla. Ct. App. 2009) (remanding case for prejudice inquiry because of trial counsel's failure to impeach police officer with prior statement claiming he was attacked by three Mexicans when same officer testified at trial he was only attacked by defendant).

The PCR court erred in finding that Cummings had a strategic reason for not presenting this information. Supp. App. III 30. At the PCR hearing, Cummings admitted he had no

strategic reason for not informing the jury that Gadson had been seen shooting the same gun that the state claimed was the murder weapon. App. 7410, l. 18 – 7411, l. 3; App. 7427, ll. 5 – 13. Cummings admitted the jury never heard that Gadson had fired the gun that came from the Edisto River. App. 7435, l. 24 – 7436, l. 3. On cross-examination, Cummings initially claimed that he did not want this evidence before the jury because it tied petitioner to the murder weapon. App. 7654, ll. 8 – 19. However, Cummings later admitted that he "didn't know it was the Edisto River gun." App. 7727, ll. 5 – 9. Trial counsel can only be credited with a reasonable trial strategy if they conduct a full investigation and are aware of all the facts. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). The evidence at the hearing contradicts the PCR court's finding, which not only is not based on any evidence, but also constitutes a legal error because Cummings did not have all of the relevant information.

This failure prejudiced petitioner. The PCR court speculated that this information would have had "minimal benefit." Supp. App. III 30. This finding ignored that the only evidence the jury heard was that petitioner controlled the murder weapon and was the only one who ever fired it. The only way to lessen the harmful impact of Gadson's testimony was to show that he also had access to the gun and had fired it. This places the murder weapon in Gadson's hands and gives the jury yet another reason to doubt the state's version of events and Gadson's credibility.

In State v. Poe, 822 N.W.2d 831, 835 (Neb. 2012), a witness in a murder case testified that the defendant confessed to the victim's murder. The defense theory was that the witness was complicit in the crime. Id. at 838. The court found that trial counsel could be held ineffective for failing to impeach the witness with a prior statement to a third party that the defendant did not commit the crime and he was being pressured to lie by the police. Id. at 848-50.

In Bryant v. State, __ So.3d ___, 2011 WL 339585, *20 (Ala. Crim. App. 2011), a capital case, the state's key witness's trial testimony differed from his prior statement by omitting the presence of a third party when the victim's body was moved. The witness also previously denied helping the defendant move a car. The witness also previously admitted holding the gun. The court found that the failure to cross-examine the witness regarding these prior inconsistencies entitled the defendant to an evidentiary hearing. Id. See also Gabaree v. State, 290 S.W.3d 175, 181 (Mo. Ct. App. 2009) (defendant entitled to remand where trial counsel failed to cross-examine victim on prior inconsistent description of crime).

In People v. Lee, 541 N.E.2d 747 (Ill. Ct. App. 2009), the defendant was charged with murder in the course of an arson. Id. at 750. The prosecution's key witness, a co-defendant, testified that he assisted the defendant in starting the fire. Id. at 750. Prior to trial, the witness gave three different versions of his story. Id. at 758-59. Like Gadson, the witness initially denied any involvement in the crime. Id. The court noted that trial counsel only asked three questions regarding the prior statements, one of which was "Didn't you tell me you weren't there that night?" Id. The court held that the previous statements should "have been used much more extensively." Id. The court also held that counsel violated a cardinal rule of cross-examination: "don't repeat the direct examination[.]" Id. at 759. Cummings also violated this rule. Cummings' cross-examination parroted the solicitor's questioning on direct in the same fashion criticized by the court in Lee. The Lee court reversed and, in part, based its decision on the accumulation of errors by counsel in handling impeachment evidence. Id. at 763.

Finally, respecting all of trial counsel's failures regarding Gadson, the PCR court erred in finding no prejudice resulted because of "overwhelming" evidence of petitioner's guilt. The state's entire case against petitioner was based on witnesses who had been charged by the state in

connection with the crime and cut deals to save themselves. Gadson was the central witness in the trial. He was the only witness who claimed he saw petitioner commit the crime. Without Gadson, the state's case was drastically weaker. Had the jury disbelieved Gadson's testimony, the result likely would have been different. No evidence supports any other conclusion.

2.

Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Travis Felder and by failing to impeach the testimony of Travis Felder in any meaningful way, including impeaching Felder with a videotape that would have shown Felder lied to the jury about buying the gas to burn the decedent's car, impeaching Felder on bias with his original charges, and impeaching Felder with his prior inconsistent statements.

Introduction

Travis Felder lied during his direct examination. Felder told the jury he followed petitioner from the Villa Apartments to Nursery Road, saw petitioner drag the decedent's body from the woods and put it in the trunk of her car, and then watched petitioner set the decedent's car on fire. Felder omitted a crucial fact: that he was the one that bought the gasoline. When Felder lied about his role, trial counsel failed to impeach him with a videotape from the gas station that showed Felder buying gasoline at 3:14 AM. Petitioner did not appear on this videotape. Trial counsel recognized this error after the jury rendered its verdict and tried to use the videotape **during the penalty phase**, but of course, by that time, the jury had already found petitioner guilty. Trial counsel also failed to impeach Felder with his original charge as accessory before the fact to murder and with his prior inconsistent statements. These deficiencies prejudiced petitioner. This Court should reverse and grant petitioner a new trial.

1. What the Jury Heard from Travis Felder During the Guilt Phase of the Trial.

Felder claimed he got home from work at approximately 6:30 PM on the day of the murder. App. 4087, ll. 2 – 6. He took a nap. App. 4087, ll. 7 – 8. He woke up from his nap at approximately 8:30 PM. App. 4087, ll. 9 – 11. He went to Fred's house where he drank beer. App. 4087, ll. 12 – 20. He saw petitioner at Fred's house. App. 4087, l. 21 – 4088, l. 2.

Petitioner asked Felder if he was going to the club. App. 4088, ll. 1 – 2. Petitioner told Felder that if he decided to go to the club, to come to the Villa Apartments. App. 4088, ll. 3 – 7.

Felder then saw a friend of his named Tyrone Smith and they proceeded to "Club Get It Get It" in Bamberg. App. 4088, ll. 11 – 19. When they left the club, they returned to Fred's house, split up their beer, and Felder returned to the Villa Apartments. App. 4088, l. 20 – 4089, l. 1. At the Villa Apartments he saw Valorna Smith. App. 4089, ll. 2 – 4. Felder and Valorna Smith decided to go to the Allen Murray Club. App. 4089, ll. 7 – 10. They first went to the store to get ice. App. 4089, ll. 11 – 18. When they got to the store, the seating arrangements changed and Valorna Smith got out of Felder's car and Carolyn Brown got in. App. 4089, ll. 11 – 18. Felder and Carolyn Brown arrived at the Allen Murray Club around midnight. App. 4089, ll. 19 – 25.

When he got to the club, Felder saw petitioner, Hiram Johnson, Darian Williams, and Taiwan Gadson. App. 4090, ll. 5 – 8. Darian Williams and James Gadson came into the club, but Hiram Johnson and petitioner did not. App. 4090, ll. 9 – 19. Felder was at the club for approximately two and one-half hours. App. 4090, ll. 20 – 23. He left the club with Carolyn Brown and Valorna Smith. App. 4091, ll. 2 – 7. They stopped at the EZ Horizon Store and Felder bought some chips. App. 4091, ll. 8 – 13. This fact was confirmed by Detective Alvin Coker's review of the videotape from the store that showed Felder buying chips at 2:56 AM. App. 6718, ll. 18 – 24.

They returned to the Villa Apartments and went to Valorna Smith's apartment. App. 4091, ll. 17 – 21. Felder said they sat around "and watched a couple of movies." App. 4091, ll. 22 – 25. Valorna Smith worked on Felder's braids. App. 4091, ll. 22 – 25. Petitioner knocked on the door at approximately 3:00 AM. App. 4092, ll. 6 – 18. Petitioner asked Felder to come

speak with him outside. App. 4092, ll. 6 – 22. Petitioner supposedly said, "Come here, I need to park this car." App. 4092, l. 23 – 4093, l. 1.

Felder Omits His Purchase of the Gasoline

Petitioner got in a Ford Escort and Felder followed petitioner in his own car. App. 4093, ll. 9 – 23. Solicitor Bailey asked Felder, "And did you leave the town of Branchville?" App. 4094, ll. 3 – 4. Felder responded, "Yes." App. 4094, l. 5. Solicitor Bailey then asked Felder, "Tell the jury where [petitioner] went, where you followed him." App. 4094, ll. 6 - 7. Felder responded, "We went out down McAlhany Road, then went out to Nursery Road." This answer was a lie because it omitted the fact that Felder went to the EZ Horizon Store and bought gasoline. App. 7017, ll. 5 – 7.

What Felder Told the Jury He Saw at Nursery Road

Omitting the key fact that he alone bought the gasoline, Felder told the jury he followed petitioner to Nursery Road. App. 4094, ll. 6 – 13. Petitioner stopped the car, went into the woods, and returned dragging the decedent's body by her feet. App. 4096, ll. 13 – 19. Petitioner put the decedent's body in the trunk of her car. App. 4097, ll. 3 – 10. Petitioner said, "You didn't think I did it, did you?" App. 4098, ll. 2 – 11. Felder replied, "Did what?" Petitioner supposedly replied, "I killed Kandee Martin." App. 4098, ll. 12 – 16. Felder never got out of his car. App. 4098, ll. 19 – 23.

Petitioner told him to drive down the road and turn around. App. 4099, ll. 2 – 6. Felder saw petitioner "get out of the car, he lit something, threw it in the car, the car was on fire." App. 4100, ll. 10 – 14. Petitioner got in Felder's car. App. 4100, ll. 15 – 18. Felder told petitioner, "Man, I don't want nothing to do with this." App. 4100, ll. 22 – 24. Petitioner allegedly replied, "Travis, I ain't get you involved with it, don't worry about it, everything is taken care of." App.

4100, l. 25 – 4101, l. 2. Felder then took petitioner home. App. 4101, ll. 3 – 4. Felder said from the time petitioner came to the apartment to the time he dropped him off at his house, it took approximately forty minutes. App. 4101, ll. 5 – 8.

Felder admitted that it was his face on the videotape buying gas after 3:00 AM. App. 6442, ll. 3 – 10. Detective Coker testified that he knew Felder was on the videotape buying gasoline at 3:14 AM. App. 7017, ll. 5 – 7. Coker testified that he informed the solicitor's office that Felder purchased the gasoline. App. 6630, ll. 1 – 5. Coker regarded videotape as "a crucial piece of evidence regarding the arson charge." App. 6633, ll. 22 – 24.

During his deposition, Felder said he told Solicitor Bailey in his pre-trial debriefing that he had purchased the gasoline to burn the decedent's car. App. 6401, ll. 2 – 16. Interestingly, Solicitor Bailey denied knowing this key fact and claimed he was surprised to learn after the verdict that Felder bought the gasoline. App. 7768, ll. 17 – 18. App. 7782, l. 18 – 7783, l. 2. Solicitor Bailey certainly did nothing to correct Felder's testimony. App. 4094, ll. 6 – 13.

At the PCR hearing, Felder admitted that in his trial testimony, he "left out" that he had purchased the gasoline used to burn the decedent's car. App. 6406, l. 24 – 6407, l. 3. At his deposition, Felder testified that the reason why he did not mention the gasoline purchase was because, "I had a lot of stuff on the table, I was scared. I was scared, I was in jail for three months and, you know what I'm saying, I lost my job, I ain't had nothing." App. 6412, ll. 8 – 15. He admitted that when he was asked by the solicitor where he went when he left the Villa Apartments and he answered that he and petitioner went to Nursery Road, that testimony was a lie. App. 6415, ll. 15 – 19.

2. What the Jury Did Not Hear in the Guilt Phase Because of Counsel's Errors

a. Petitioner Himself is the First Person to Point out Felder's Lie about the Gasoline

Cummings failed to impeach Felder with the fact that he lied about purchasing the gasoline. It was not until after the beginning of the sentencing phase that this fact was brought to light. Neither Cummings nor Thomas caught Felder's lie—petitioner did. Before the sentencing phase commenced, Cummings told the trial judge that petitioner had something he wanted to tell her. App. 4590, ll. 13 – 18. After defense motions, Thomas introduced petitioner. App. 4621, l. 25 – 4622, l. 1. Petitioner said:

> Ma'am, I was going through some of my paperwork, right, I noticed that in some of my information I had wrote down that I would like the jury to see the videotape that Detective Coker and Agent Helms took from the gas station showing that Travis Felder after he dropped me off home went to the gas station and bought a dollar worth of gasoline.

App. 4622, ll. 3 – 10. Cummings then says, "The tape is in evidence." App. 4622, ll. 11 – 13. Cummings says, "[M]y client is asking us to show a portion of the tape in his mitigation case as to giving the jury something to consider along the lines of mitigation, also about possible issue of testimony. I'll leave it at that." App. 4622, ll. 20 – 24. Cummings also said, "And I would not prohibit that to make sure the record knows that we are not at odds with Mr. Bowman or that we are not prohibiting him from presenting any mitigation facts that would be presented to the jury, Ma'am." App. 4623, ll. 10 – 15. Of course, this impeachment evidence did not belong in the mitigation case, but in the guilt phase.

b. Felder's Original Charges and the Changing of his Story Immediately Before Trial

The jury never heard that the state had originally charged Felder with accessory before the fact to the decedent's murder. The jury also never heard that Felder lied to police immediately before trial.

When Felder was first interviewed by the police, he told them he did not know anything about the decedent's death. App. 6381, ll. 17 – 25. He was told on Monday, February 19, that Dorchester County had a warrant for his arrest so Felder turned himself in and was jailed. App. 6382, ll. 5 – 14. He was given a Miranda waiver. App. 6382, ll. 19 – 24. App. 8974. Felder once again denied any knowledge of the decedent's murder to the police. App. 6384, ll. 7 – 16.

On February 19, 2001, Detective Coker swore out an affidavit charging Felder with accessory to felony murder/arson. App. 8975. The warrant was served on Felder the same day. App. 6384, l. 25 – 6385, l. 5. At the PCR hearing, Felder testified that in 2001, he knew he was charged with murder and arson. App. 6387, ll. 11 – 14. Felder hired an attorney, Charles Williams. App. 6389, l. 24 – 6390, l. 1. Charles Williams advised Felder he was facing either life in prison or the death penalty on the murder charge. App. 6390, ll. 2 – 6.

Felder never gave a written statement to the police. App. 6392, ll. 3 – 5. On March 27, 2002, during plea negotiations, Felder's attorney sent a proffer letter to Solicitor Bailey. App. 9118. The proffer letter omits two important items. App. 9118. The proffer letter omits that Felder bought the gasoline. App. 9118. It also omits Travis Felder's claim at trial that he saw petitioner put the decedent's body in the trunk of the car. App. 9118. Cummings admitted that the version in the proffer letter was different from Felder's trial testimony. App. 7050, ll. 4 – 19.

On April 16, 2002, a month before petitioner's trial, Officer Van Doran administered a polygraph examination to Felder. App. 8973. During the examination, Felder was asked if he saw the decedent's body placed into the trunk of her car. App. 8973. Felder answered no. App. 8973. The polygraph results indicated deception. App. 8973. At the PCR hearing, Felder stated he could not remember taking the polygraph exam. App. 6392, l. 6 – 6393, l. 21. Cummings admitted that he had a copy of Felder's polygraph report. App. 7037, l. 22 – 7038, l. 2.

Subsequent to the failed polygraph examination and after talking with his attorney, Felder decided to enter into a plea agreement. App. 6396, l. 4 – 6397, l. 10. Felder had a debriefing with Solicitor Bailey. App. 6398, ll. 10 – 13.

Felder's plea agreement was executed on May 23, 2002, which was during the sentencing phase of petitioner's trial. App. 8969 – 8972. In his plea agreement, Felder agreed to plead guilty to the offense of accessory after the fact of arson in exchange for his testimony. App. 8969. His indicted charges of accessory after the fact of murder and arson third-degree would be dismissed. App. 8969 – 8972. The plea agreement allowed the solicitor to reinstate all of Felder's charges and seek the maximum penalty. App. 8971. The new charge carried a maximum sentence of five years in prison. App. 6423, ll. 17 – 20. Felder was ultimately sentenced to three years' imprisonment suspended to three years' probation. App. 6424, ll. 10 – 14.

3. The PCR Court's Ruling

The PCR court ruled that Cummings had a valid strategic reason for failing to expose Felder as a liar. The PCR court found that Cummings did not want the videotape entered into evidence because it would "corroborate Applicant's involvement in the plan to burn the car." Supp. App. III 47. The court further held that exposing Felder as a liar would not have influenced the outcome of the trial. Supp. App. III 47-48. The PCR court based this conclusion on Felder's after-the-fact claims during the PCR hearing and during the sentencing phase that petitioner instructed him to buy the gas and that petitioner did not appear on the tape because he waited around the corner. App. 6430, ll. 13 – 17. Petitioner presented these claims in his applications and in his post-trial brief. App. 9477-97.

4. Discussion

a. Counsel's Failure to Impeach Felder with His Lie about the Gasoline Purchase was Deficient and Prejudiced Petitioner

The PCR court erred in finding that Cummings had a strategic reason for not impeaching Felder with his lie about the gasoline. First, the evidence at trial seemed to suggest that Cummings did not even realize that Felder had lied about the purchase of the gasoline. Petitioner was the first person to mention it. App. 4622, ll. 3 – 10. After petitioner brought Felder's lie to everyone's attention, Cummings called Felder as a witness in the penalty phase and impeached him with the videotape. App. 4911, l. 19 – 4929, l.10. Cummings introduced the videotape into evidence during Felder's penalty phase testimony and played it for the jury. App. 4929, ll. 1 – 8; Defendant's Ex. 19. Cummings' penalty phase impeachment of Felder directly contradicts the PCR court's conclusion that he made a strategic decision to keep it out because **he actually introduced it, but too late.**

At the PCR hearing, Cummings initially claimed that he knew Felder had purchased the gasoline before trial. App. 7004, l. 18 – 7005, l. 7. Cummings said "there was no question that Travis had bought the gasoline later that evening." App. 7004, ll. 21 – 24. Cummings first maintained that he was "very frightened of that tape." App. 7005, ll. 5 – 7. Cummings complained that he was frightened of the tape because "there was no evidence against Marion that he bought the gasoline, that he poured the gasoline, that he did anything about burning this young white female in Dorchester County." App. 7006, ll. 1 – 5.

This backpedaled assertion of strategy is an astounding claim in the face of Felder's damaging testimony at trial about petitioner burning the car. Even if Cummings actually possessed such a strategy, it was unreasonable in light of the fact that it was completely

incorrect. Cummings' claim that nothing tied petitioner to the burning of the car ignores what Felder told the jury he saw at Nursery Road. Furthermore, any strategy that the tape would corroborate that petitioner was involved with the plan to burn the car is unreasonable because the tape did not show petitioner. App. 7006, ll. 12 – 16.

Regardless of the unreasonableness of such a strategy, the PCR court also erred because Cummings ultimately admitted he had no strategic reason for not impeaching Felder. During the Attorney General's questioning **and during questioning by Judge Lockemy**, Cummings confessed he lacked any strategy regarding his handling of Felder. App. 7664, l. 25 – 7666, l. 23. The Attorney General asked:

> Q. All right. So, when Travis testified during the guilt phase and did not mention purchasing the gas beforehand why did you decide not to elicit that from him at the time?
>
> A. **I don't know.** I can't sit here and tell you why I didn't do it. I don't know. Maybe I didn't want how he purchased the gas or for whom.
>
> MR. BROWN: Your Honor, I object to that speculation.
>
> THE COURT: If you don't know you don't know.
>
> Q. You don't recall saying you saw no good in that coming in, it was ultimately confirmatory of what Felder had said?
>
> A. I just said a moment ago I don't recall, I didn't remember if I chose not to. To answer the question, I must have had a reason at that time and it would be hurting, but again I really can't say that today, I can't. I'm trying to go back and think. I know I didn't choose certain lines of questions in this case, I chose not to do that, and we have been over that now for three days. To answer your question in particular about that, **I don't recall specifically the reason why, I don't, other than I tried the case as I thought appropriate.**
>
> Q. So, you don't remember, you don't remember expressing to me a strategic reason for that?

MR. BROWN: Your Honor, this is some kind of vouching or bolstering here. Now he is going into a conversation they have had.

MR. WATERS: I did not –

THE COURT: He asked if he remembered. If he doesn't remember he doesn't remember.

THE WITNESS: I really don't, sorry, sir.

THE COURT: He doesn't remember.

MR. WATERS: Okay.

BY MR. WATERS:

Q. So, you don't recall ever saying you saw no good in, that you saw no good in it coming in, that you held it back in the guilt phase because it cuts both ways but that ultimately you –

THE COURT: He says he doesn't remember. Let's proceed.

MR. WATERS: I was trying to refresh his recollection.

MR. BROWN: With a conversation they had.

THE COURT: Do you remember anything, Mr. Cummings?

THE WITNESS: No, I don't. No, sir, I don't.

THE COURT: He doesn't remember.

THE WITNESS: I don't know what to say.

BY MR. WATERS:

Q. Okay. Do you recall whether or not it was an intentional decision at this point? I'm asking you if you recall.

THE COURT: That's a different area.

> A. **I don't believe it was intentional.** I don't believe I would not have asked something or if I thought at the time something else was going to come out about it. There was no gasoline on my client's pants, I didn't want anybody tying him to Felder, for Marion telling him to go buy the gas. I would say that with open heart. So, if I, when I was meeting with you I said something **I don't recall it, I don't remember. I don't.**

App. 7665, l. 6 – 7667, l. 20 (emphasis added). This testimony conclusively shows that the PCR court's finding that Cummings strategically failed to impeach Felder is not based on any evidence.[2]

This error severely prejudiced petitioner. Had trial counsel exposed Felder as a liar—not just in a prior statement, but under oath before the jury—Felder's credibility would have been severely damaged. The jury would have realized that Felder deliberately obscured his role in the burning of the car. Felder already testified that petitioner burned the car, so petitioner was already linked to the gasoline and the arson.

This failure to impeach Felder left his testimony unchallenged and gave the jury the impression that petitioner essentially acted alone in the decedent's murder. Felder would have been the second state's witness to be shown as a liar on the stand and telling an unbelievable story that they were merely innocently present at the scene of a horrific crime. Had Felder been exposed as a liar and his role in the arson been shown to the jury, the outcome of the trial would likely have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989).

[2] This exchange between the Court and Cummings also bears on Issue 7 of this petition concerning the wholesale adoption of proposed orders submitted by the state. At the hearing, Judge Lockemy clearly credited Cummings' testimony that he had no strategy, but the state's proposed order contradicts Judge Lockemy's finding. The fact that the final order does not express Judge Lockemy's findings shows the due process errors that arise from this condemned practice.

b. Petitioner was Prejudiced by Cummings' Failure to Impeach Felder with his Original Charges and Inconsistent Statements.

The PCR court erred in finding that Cummings did not perform deficiently when he failed to impeach Felder with his original charges. Supp. App. III 44-47. First, the PCR court's order contains no assertion that Cummings informed the jury that Felder was originally indicted as an accessory before the fact. Supp. App. III 44-47. Instead, the PCR court credits Cummings with a reasonable trial strategy based on the idea that if he cross-examined Felder about his original charges, that petitioner's written statements would come into evidence. Supp. App. III 46.

Such a notion cannot form the basis of reasonable trial strategy because it is not based on an accurate understanding of the rulings at trial. The state was in possession of four written statements purportedly given by petitioner. App. 9214-26. The first two of these statements contain no inculpatory statements. App. 9214-26. The third statement inculpates Gadson. Petitioner said that Gadson drove him into the woods and showed him the decedent's dead body and confessed to murdering her. App. 9214-26. The fourth alleged statement, written in the hand of Orangeburg County Sheriff Larry Williams, was suppressed as involuntary by Judge Goodstein. App. 1333, l. 14 – 1355, l. 2. Judge Goodstein found that Sheriff Williams coerced this statement from petitioner and suppressed it. App. 1352, l. 7 – 1355, l. 2. Solicitor Bailey did not use petitioner's other three statements during the trial likely because they helped petitioner's case or would create a possible appellate issue. Regardless of Solicitor Bailey's reasons, the state could have used the first three statements at any time. It is difficult to grasp how impeaching a state's witness for bias due to lenient treatment is the evidentiary predicate for admission of a defendant's statements, particularly one obtained by the Sheriff's coercion.

Cummings also claimed that evidence that was involuntarily produced could still be introduced if an attorney made a mistake and opened up the door. App. 7007, l. 19 – 1278, l. 3. This was a mistake of law by Cummings. Involuntary statements are not allowed to be used against a criminal defendant for impeachment purposes. Mincey v. Arizona, 437 U.S. 385 (1978); New Jersey v. Portash, 440 U.S. 450 (1979). The PCR court unfortunately adopted Cummings' legal error in its own ruling. Therefore, the credited trial strategy was unreasonable and Cummings performed deficiently. Cummings should have cross-examined Felder about his original charges.

Furthermore, the PCR court's ruling is not based on any evidence produced at the PCR hearing. Cummings said he did not find out Felder was cutting a deal until the eve of trial. App. 7024, l. 22 – 7025, l. 2. Cummings said he did not have Felder's plea agreement until after the trial. App. 7026, ll. 19 – 24. He admitted that Felder had been charged with accessory to murder and would have been as guilty as the principal. App. 7029, ll. 10 – 17. Felder avoided a potential life sentence or the death penalty and never served a day in prison. App. 7030, ll. 2 – 9. Cummings called Felder's deal a "sweetheart deal" and the magnitude of the reduction in his charges was relevant to bias. App. 7030, ll. 22 – 23. App. 7034, ll. 16 – 25. Cummings ultimately **apologized** for not cross-examining Felder on this issue. App. 7030, ll. 10 – 15.

The PCR court also erred in finding that trial counsel was not deficient in failing to impeach Felder with his inconsistent statements made immediately before he agreed to testify against petitioner. Supp. App. III 40-47. Driscoll v. Delo, 71 F.3d 701, 710-11 (8th Cir. 1995); Berryman v. Morton, 100 F.3d 1089, 1097; Peebles v. State, 958 S.W.2d 533, 536-37 (Ark. 1998); Delarosa v. State, 24 So.3d 741, 741-42 (Fla. Ct. App. 2009) State v. Poe, 822 N.W.2d 831, 835 (Neb. 2012); Bryant v. State, __ So.3d ___, 2011 WL 339585, *20 (Ala. Crim. App.

2011); Gabaree v. State, 290 S.W.3d 175, 181 (Mo. Ct. App. 2009); People v. Lee, 541 N.E.2d 747 (Ill. Ct. App. 2009). Cummings apologized that he didn't impeach Felder with the inconsistencies between the proffer letter and polygraph statements and Felder's trial testimony. App. 7045, ll. 1 – 10. When questioned by Judge Lockemy, Cummings said he had no strategic reason for not impeaching Felder. App. 7045, ll. 16 – 25. Cummings admitted that Felder's repeated assertions that he had nothing to do with the murder and then changed his story to accuse petitioner after cutting a "sweetheart" deal should have been used on cross-examination. App. 7046, ll. 14 – 25.

This deficient performance prejudiced petitioner. Had the jury known Felder was originally charged as an accessory before the fact, the magnitude of the deal received by Felder in exchange for his testimony against petitioner would have shown the extent of his bias and placed his inconsistent statements in their proper context. At the time of the trial, Felder faced the death penalty on the accessory before the fact of murder charge. It was not until 2007 that this Court decided that a defendant charged with accessory before the fact could not receive the death penalty. State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007). Felder testified that his attorney told him he was facing either life in prison or the death penalty on the murder charge. App. 6390, ll. 2 – 6. Had the jury heard that Felder faced and feared the death penalty, then it would have seen his motivation to fabricate testimony favorable to the state. The fact that Felder changed his story only weeks before trial would have further undermined his credibility. Trial counsel's deficient performance in these areas prejudiced petitioner and he is entitled to a new trial.

3.

Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment Hiram Johnson and by failing to impeach the testimony of Hiram Johnson by cross-examining Johnson on his prior inconsistent statement which, critically, did not include his allegation at trial that petitioner confessed to the murder.

Introduction

The solicitor portrayed Hiram Johnson as one of the state's best witnesses because he seemed to be unbiased. As will be shown in Issue 4, Johnson was, in fact, a biased witness because he had pending charges against him that were not disclosed by the state. Johnson was an important witness for the state, primarily because he testified that petitioner confessed to the murder. Had trial counsel impeached Johnson with available evidence, there is a reasonable probability that the outcome of the trial would have been different.

1. What the Jury Heard at Trial from Johnson

Hiram Johnson testified that Taiwan Gadson was his cousin. App. 6251, ll. 16 – 17. He had known petitioner and Gadson his entire life. App. 4057, ll. 4 – 10. He knew the decedent. App. 4057, ll. 11 – 12.

In the early afternoon on the day of the murder, Johnson was at Hank Koger's house. App. 4057, ll. 20 – 23. Johnson overheard an argument between petitioner and Gadson about the gun being moved. App. 4059, ll. 9 – 12. Johnson told petitioner that he had moved the gun. App. 4059, ll. 22 – 24. Johnson removed the gun from a barrel at Koger's house and took it to Katrina West's house. App. 4060, ll. 5 – 8. Petitioner retrieved his gun and came back to

Koger's house. App. 4060, ll. 12 – 19. Johnson's testimony contradicted Gadson, who said Johnson retrieved the gun from the woods. App. 3989, ll. 16 – 20.

Later that evening, petitioner came to Katrina West's house and asked Johnson if he wanted to go downtown. App. 4061, ll. 15 – 18. Johnson claimed that he and petitioner took Yolanda Bowman's car to the Horizon EZ Shop where Johnson saw petitioner ask Gadson's father to buy four pairs of gloves. App. 4062, ll. 3 – 22.

After buying the gloves, they went back to the Villa Apartments and later decided to drive to the Allen Murray Club. App. 4063, l. 15 – 4064, l. 6. Johnson claimed that petitioner drove the decedent's car with him, Gadson, and Darian Williams as passengers. App. 4064, ll. 7 – 20. Johnson claimed that petitioner made the three men put on gloves and said he had stolen the decedent's car. App. 4065, ll. 1 – 17.

When they got to the Allen Murray Club, petitioner walked around the parking lot trying to sell the car. App. 4066, l. 18 – 4067, l. 8. Johnson remained in the car. App. 4066, ll. 12 – 17. They were at the club about an hour and left at approximately 1:00 AM.. App. 4066, l. 24 – 4067, l. 11. Johnson claimed that on the way back from the club, petitioner said "I killed Kandee, heh, heh, heh." App. 4068, ll. 4 – 6. Johnson saw a gun sitting on petitioner's lap. App. 4068, ll. 17 – 18.

On cross-examination, Cummings clumsily asked Johnson about giving a statement to Alvin Coker on February 22. App. 4073, ll. 5 – 9. Cummings attempted to impeach him with the statement but was unable to do so. App. 4076, ll. 21 – 24. Solicitor Bailey objected and Cummings dropped his impeachment attempt. App. 4076, l. 21 – 4077, l. 6.

2. What the Jury Did Not Hear Because of Trial Counsel's Ineffective Cross-Examination

In fact, Johnson gave a written statement to Detective Coker on April 5, 2001. App. 9054. Nowhere in this written statement does Johnson claim that petitioner made the devastating admission, "I killed Kandee, heh heh heh." App. 9054. At the PCR hearing, Johnson could not even remember whether he ever told the police about petitioner's supposed confession. App. 6289, ll. 7 – 13. Next he said at PCR that he thought petitioner was kidding when he said that he had killed the decedent. App. 6290, ll. 10 – 14. He did not tell the jury that he thought petitioner was kidding. App. 6290, ll. 15 – 17. Johnson testified that his response to petitioner was, "Man, stop playing." App. 6298, ll. 3 – 10.

Cummings did not ask Johnson any questions about the April 5, 2001, statement, much less the glaring omission that petitioner had confessed to the murder. At the PCR hearing, Cummings admitted that Johnson needed to be impeached because he claimed he heard petitioner confess to the killing. App. 7114, ll. 20 – 23. Cummings admitted that the confession was not in Hiram Johnson's written statement. App. 7116, ll.12 - 15. He described Hiram Johnson's testimony about petitioner's alleged confession as "the worst evidence in the world." 7117, ll. 2 – 4. Cummings could not explain why he did not cross-examine Johnson on whether or not Johnson thought petitioner was kidding when he said, "I killed Kandee, heh heh heh." App. 7677, ll. 13 – 20.

3. The PCR Court's Ruling

The PCR court held that Cummings gave a valid strategic reason for not cross-examining Johnson about the inconsistency between his written statement and his trial testimony. The PCR court credited Cummings as saying he did not want the statement repeated in front of the jury. Supp. App. III 55.

4. Discussion

The PCR court's conclusion was erroneous. It was impossible for the jury to overlook such a damaging piece of evidence as a confession. The solicitor already had Johnson repeat this testimony twice on direct-examination. App. 4067, l. 25 – 4068, l. 6. A reasonable trial lawyer would certainly know the solicitor would emphasize such a damaging piece of evidence in closing argument, which Solicitor Bailey certainly did. App. 4474, ll. 12- 21. Solicitor Bailey told the jury in his closing argument that petitioner laughed about the murder. App. 4474, ll. 12-21. He repeated the alleged confession twice. App. 4474, ll. 12- 21. Solicitor Bailey also said, "And Hiram Johnson's a friend of [petitioner's] with no reason to lie about it. App. 4474, ll. 12-21. As will be seen in Issue 4, this was a deliberate misrepresentation to the jury because Johnson had pending charges which the solicitor did not disclose to the defense.

Given the damaging nature of this evidence, it was unreasonable not to cross-examine Johnson on the serious omission in his written statement. The failure to impeach a witness with prior inconsistent statements is deficient performance that prejudices a defendant. Driscoll v. Delo, 71 F.3d 701, 710-11 (8th Cir. 1995); Berryman v. Morton, 100 F.3d 1089, 1097; Peebles v. State, 958 S.W.2d 533, 536-37 (Ark. 1998); Delarosa v. State, 24 So.3d 741, 741-42 (Fla. Ct. App. 2009); State v. Poe, 822 N.W.2d 831, 835 (Neb. 2012); Bryant v. State, __ So.3d ___, 2011 WL 339585, *20 (Ala. Crim. App. 2011); Gabaree v. State, 290 S.W.3d 175, 181 (Mo. Ct. App. 2009); People v. Lee, 541 N.E.2d 747 (Ill. Ct. App. 2009). Considering the detail of the written statement, it confounds belief that such an important piece of evidence was omitted. Had the jury known that petitioner's alleged confession was a courtroom invention, it would have called Johnson's credibility into question, especially considering that, as far as the jury knew, Johnson

had not been charged and was petitioner's "friend." Cummings' failure to cross-examine Johnson on this issue constituted deficient performance that prejudiced petitioner.

4.

Petitioner is entitled to a new trial because the state withheld information necessary for impeachment and necessary for defense in violation of petitioner's due process rights under the Fourteenth Amendment and under the rules of discovery, those items being a memorandum of a law enforcement interview with Ricky Davis who heard Gadson confess to the murder, Gadson's mental health evaluation, and the fact that Hiram Johnson had unindicted pending charges at the time of his testimony.

Introduction

The state withheld three key pieces of evidence from the defense. The state failed to disclose that it had interviewed Ricky Davis, who heard Gadson confess to the murder and that he had framed petitioner. The state failed to disclose Gadson's mental health evaluation that showed he heard voices, suffered from blackouts, heard beeping noises, and smoked six blunts of marijuana a day. Finally, the state failed to disclose charges pending in the same judicial circuit against one of its key witnesses, Hiram Johnson. Each of these pieces of evidence was material to the defense and their suppression meant that petitioner did not receive a fair trial.

Discussion

The state's duty to disclose evidence favorable to the defendant is addressed by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963) "The suppression by the [state] of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment." Brady, 373 U.S. at 87. Consequently, an individual asserting a Brady violation must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the state; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419, 432-42 (1995); State v. Moses, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010); Riddle

v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006).

Brady evidence includes both exculpatory and impeachment evidence. United States v. Bagley, 473 U.S. 667, 676 (1985); Kyles, 514 U.S. at 436-40. When assessing whether to overturn a case because of the state's failure to disclose evidence, "[t]he question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial 'resulting in a verdict worthy of confidence.' " Riddle, 369 S.C. at 45, 631 S.E.2d at 73 (quoting Kyles, 514 U.S. at 434)).

In this case, the Court need not address two of Brady's four prongs. For each of the three violations, the PCR court found that the state was in possession of the evidence and did not disclose it to the defense. Therefore, the Court's analysis will turn on whether the evidence was favorable to petitioner and material.

1. Ricky Davis – The Sam Memo

Ricky Davis was housed at the Dorchester County Detention Center with Gadson. App. 5978, ll. 14 – 22. Ricky Davis testified that they were housed on "A Side." App. 5978, ll. 21 – 22. Officer Van Doran interpreted the jail records introduced at the PCR hearing. App. 6529, l. 8 – 6532, l. 23; App. 9064 – 66. Officer Van Doran confirmed that Gadson was housed on "A Side." App. 9065; App. 6532, LL. 6 – 9. The jail records did not indicate where Ricky Davis was housed. App. 6532, ll. 18 – 21. Officer Van Doran testified that petitioner was housed in the maximum security "C Side" pod. App. 6532, LL. 10 – 17; App. 9066. Petitioner's cell is shown as "C-8". App. 9066.

On August 6, 2001, Ricky Davis wrote the following note which recounted a confession made by Gadson to the decedent's murder:

> I Rickie Davis was on A side with Gadson and he said that he was the one that shot the girl and gave petitioner back the gun that was used and He said that it

didn't mater because Blak famile had got caught with the gun. He also that the police all he got to do is say Blak did it.

App. 8966 (errors in original). Ricky Davis confirmed in his testimony at the PCR hearing that the note was in his handwriting. App. 5979, ll. 2 – 4. Ricky Davis testified that he wrote this note on August 6, 2001. App. 5979, l. 23 – 5980, l. 4.

Eighteen months before the PCR hearing, PCR counsel subpoenaed the prosecutor's file. App. 6769, ll. 4 – 24. PCR counsel did not get the prosecutor's file until approximately one month before the PCR hearing began. App. 6769, ll. 4 – 24. In the file, PCR counsel found notes written by an investigator in the solicitor's office named Sam Richardson ("Sam"). App. 6773, l. 12 – 6774, l. 9. The notes were from an interview Sam conducted with Ricky Davis. App. 6773, l. 12 – 6774, l. 9. These notes became known at the hearing as the "Sam Memo."

The text of the Sam Memo confirms Ricky Davis' handwritten note and adds detail:

RICKY DAVIS INTERVIEW

CONDUCTED BY SAM AT LIEBER CORRECTIONAL INSTITUTION.

RICKY DAVIS STATES THAT HE AND JAMES TAIWAN GADSON ALONG WITH 4 OR 5 OTHERS WERE SITING AT A TABLE ON THE A-SIDE. GADSON WAS TALKING TO THE GROUP WHEN HE SAID SOMETHING ABOUT KILLING A GIRL. HE STATED THAT THEY WERE GOING TO ROB SOMEONE. THEY THOUGHT SHE WAS WIRED AND HE SHOT HER IN THE HEAD WITH A .380.

THIS CONVERSATION OCCURRED ABOUT 3 WEEKS BEFORE HE WROTE THE LETTER. (AUGUST 6, 2001).

AFTERWARDS, DAVIS WAS PLAYING CHESS WITH MARION BOWMAN IN CELL 8. DAVIS TOLD MARION BOWMAN ABOUT THE CONVERSATION HE HAD WITH JAMES GADSON. BOWMAN SAID "IF YOU HEARD ALL THIS, WRITE IT DOWN." BOWMAN SHOWED HIM A PICTURE OF THE DEAD GIRL. HE ALSO SHOWED HIM A FILE FROM HIS ATTORNEY.

BOWMAN SAID HE HAD BEEN SMOKING DOPE THAT DAY. HE SAID IT WAS HIM, JAMES GADSON AND THE GIRL AT THE SCENE. THE GIRL WAS SUPPOSE TO HELP THEM ROB A HOUSE TO GET DRUGS AND MONEY. BOWMAN KNEW THE INTENDED VICTIM.

BOWMAN NEVER ADMITTED HE SHOT ANYONE.

SUBSEQUENT TO THIS, DAVIS TALKED TO JAMES GADSON AGAIN. AT THIS TIME, GADSON SAID THAT BOWMAN SHOT HER.

App. 9122.

Solicitor Bailey initially claimed that he could not recall whether the Sam Memo was provided to the defense. App. 7860, ll. 12 – 16. Bailey then alleged that the Sam Memo was subject to the attorney-client privilege because he viewed Sam Richardson as his "alter ego." App. 7861, ll. 17 – 25. Bailey then attempted to characterize the Sam Memo as work product. App. 7878, l. 3 – 7879, l. 18. Bailey made the extraordinary inference that unless something was produced by an agency outside of the solicitor's office, such as law enforcement or the Department of Corrections, it was protected by the work product privilege. App. 7878, l. 23 – 7879, l. 6.

Even though Ricky Davis was brought to the courthouse during petitioner's trial, Cummings and Thomas elected not to call him as a witness. App. 5980, ll. 5 – 15. Ricky Davis recalled Thomas meeting with him in the holding cell. App. 5980, l. 16 – 5981, l. 16. He told Thomas he wrote the August 6, 2001, note. App. 5981, ll. 4 – 22. As will be seen in Issue 5, Thomas had a conflict of interest because she represented Davis on other charges while she represented petitioner. Thomas admitted that the unsigned notary block on the August 6, 2001, note was her handwriting. App. 7294, ll. 23- 24. Thomas never told Cummings she represented Davis. App. 7059, ll. 4 – 6.

Cummings testified that the first time he ever saw the Sam Memo was when it was handed to him at the PCR hearing. App. 7061, l. 17 – 7063, l. 7. The only thing Cummings recalled learning about Ricky Davis was the handwritten note that was signed by Davis. App. 7062, ll. 17 – 24. Cummings was familiar with the solicitor's investigator, Sam Richardson. Investigator 7062, ll. 4 – 9. He did not know that Sam Richardson had interviewed Ricky Davis. App. 7062, ll. 17 – 24. Cummings admitted the knowledge that Gadson and Davis were in a cell together would have been very helpful. App. 7065, ll. 6 – 16. Cummings said he sent his own investigator to check with Ricky Davis and Davis told the investigator that he denied giving the statement. App. 7065, ll. 17 – 24.

The PCR court did not find that the Sam Memo was disclosed to the defense, but instead found, erroneously, that the Sam Memo was not favorable to the defense or material under Brady. Supp. App. III 57-60. First of all, the Sam Memo is clearly relevant to guilt or innocence. It recounts a co-defendant confessing to the crime. It is hard to imagine any piece of evidence that could be more material to guilt or innocence. The Sam Memo also constitutes impeachment evidence. It directly contradicted the only eyewitness to the murder. Sam's interview took place at Lieber where Davis had no contact with petitioner and nothing to fear from petitioner. It was also an interview conducted by the state and the jury was likely to be favorably disposed to a witness' testimony that had been confirmed by law enforcement.

Furthermore, the PCR court's ruling is based on a legal error. The PCR court's order inaccurately states that Cummings would not have called Ricky Davis as a witness or changed his strategy had he known about the Sam Memo. Supp. App. III 59-60. The question is not whether Cummings' strategy would have changed, but whether the evidence is material for guilt or innocence or impeachment. Also, Cummings' statements are irrelevant if they conflict with

the actions that would be taken by a reasonable attorney. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Considering the seriousness of the charges and the necessity of impeaching the state's sole witness to the crime, not calling Ricky Davis or Sam Richardson would be an unreasonable act.

Furthermore, the PCR court's order mischaracterizes Cummings' testimony. Cummings testified that had he known about the second interview by law enforcement, "I would put Mr. Richardson up on the stand if I had known about it." App. 7069, ll. 6 – 11. Cummings admitted that he made the decision not to put Ricky Davis on the stand without the benefit of the knowledge of Sam's interview of Ricky Davis. App. 7072, ll. 5 – 7. Cummings stated that if he had known of the interview it "would have really shed a different light." App. 7627, ll. 2 – 4. Cummings said that the Sam Memo meant that he "would have known the state thought he was of evidentiary value early on." App. 7627, ll. 9 – 17. Cummings testified, "I don't think Sam would make anything up." App. 7728, l. 16.

Under these circumstances, the PCR court's ruling that the Sam Memo was not material under Brady is erroneous. See Conyers v. State, 790 A.2d 15 (Md. 2002) (reversing death sentence in part because prosecution violated Brady when it failed to disclose impeachment evidence on a jailhouse informant). Its omission renders the trial's outcome unworthy of confidence and resulted in an unfair trial for petitioner. Therefore, the PCR court's ruling must be reversed.

2. Gadson's Mental Health Evaluation

Bailey admitted that he did not provide the defense with Gadson's mental health evaluation. App. 7851, ll. 20 – 24. Cummings testified that he never received Gadson's mental evaluation. App. 7377, ll. 16 – 23. Based on this testimony, the PCR court did not rule that

Gadson's mental health evaluation was provided to the defense. Instead, the PCR court found that the evaluation was not favorable and not material.[3]

Gadson's evaluation was completed on September 10, 2001. App. 8957. It diagnosed Gadson with "Cannabis Dependence" and "History of Seizure Disorder." App. 8957. In the report, Gadson told the doctors that he suffered from blackouts. App. 8959. Gadson said he smoked "six blunts of cannabis on a daily basis." App. 8960. The report states, "He does report that he hears a voice and 'a little beeping noise.'" App. 8960. The report also noted that Gadson's testing showed he had memory problems. App. 8960.

The PCR court's finding that this information was not material is erroneous. The information in the report could have been used to impeach Gadson. Had the jury heard that he had memory problems, blackouts, heard voices and beeping noises, it would have undermined Gadson's credibility. It also would have supported a defense theory that Gadson was the murderer. Cummings admitted that hearing beeping noises, voices, consuming drugs, having blackouts would've been relevant to Gadson's credibility. App. 7378, ll. 14 – 22. Cummings admitted that failure to cross-examine Gadson on anything in the mental evaluation would not have been trial strategy. App. 7378, l. 23 – 7379, l. 13. Even Solicitor Bailey admitted there would be impeachment value to the mental health evaluation. App. 7852, ll. 11 – 14. Under

[3] The PCR court inexplicably found that trial counsel could have obtained the mental health evaluation and that relieved the state from the burden of producing it. Even if this were a correct statement of the law, then trial counsel were ineffective for not obtaining the report and using it to impeach Gadson. It is not, however, a correct statement of the law, since, as stated by the United States Supreme Court in Kyles, "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation . . . the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable." Kyles, 514 U.S. at 437-38.

these circumstances, the Court should find that the state violated Brady by not disclosing Gadson's evaluation to the defense.

3. Hiram Johnson's Pending Charges

Hiram Johnson had pending charges in Orangeburg County at the time of his testimony and petitioner's case. App. 6263, l. 18 – 6265, l. 14. The warrant for Johnson for receiving stolen goods was sworn on November 13, 2000 and served on him May 29, 2001. App. 9074. Johnson claimed he did not remember what the charges were. App. 6265, ll. 9 – 14. The warrant was served and pending. App. 7102, ll. 13 – 20. Johnson also had pending charges for second degree burglary and grand larceny. Supp. App. III 50. The charges pending in Orangeburg were dismissed. App. 6276, l. 17 – 6277, l. 42. They were dismissed by the same solicitor's office that prosecuted petitioner. App. 6277, ll. 11 – 23. Johnson claimed he could not remember why the charges were dismissed. App. 6277, ll. 3 – 5.

Solicitor Bailey admitted he had no recollection of providing any information to Cummings or Thomas about Johnson's pending burglary charges. App. 7832, ll. 1 – 8. Bailey admitted this evidence would be relevant to bias. App. 7832, ll. 17 – 22. Bailey first attempted to suggest that the Attorney General's office would have handled Hiram Johnson's pending charges in Orangeburg County. App. 7833, l. 13 – 7834, l. 1. Bailey then was forced to admit that an assistant solicitor with his office actually prosecuted the case. App. 7834, l. 2 – 7835, l. 3. Bailey agreed that unless Johnson's charges appeared on his rap sheet, it was unlikely that information was conveyed to petitioner's attorneys. App. 7834, ll. 2 – 23. Interestingly, Detective Coker testified that rap sheets usually show pending charges statewide. App. 6740, ll. 3 – 7.

Cummings testified that according to the rap sheet he received, there were no pending charges against Johnson in the first judicial circuit. App. 7100, ll. 4 – 24. Johnson was arrested May 29, 2001. App. 7100, l. 25 – 7101, l. 2. Johnson was not indicted until April 17, 2003, after the trial. App. 7100, l. 25 – 7101, l. 2. Cummings said that the only thing shown on Johnson's rap sheet was a conviction for unlawful possession of a pistol. App. 7101, ll. 17 – 23. It did not show the pending warrant. App. 7101, l. 24 – 7102, l. 4.

Cummings admitted the pending charge could have been used to impeach Johnson for bias. App. 7103, ll. 6 – 8. Cummings would have asked questions about Johnson's pending charges had he known about them. App. 7106, l. 21 – 7107, l. 4. Cummings agreed that Hiram Johnson need to be impeached because he claimed he heard petitioner confessed to the killing. App. 7114, ll. 20 – 23.

The PCR court did not find that the charges were disclosed to the defense, but inexplicably held that they were not material because of the "overwhelming evidence of Applicant's guilt." Supp. App. III 50. This patently erroneous approach to analyzing evidence was disapproved by a unanimous United States Supreme Court in Holmes v. South Carolina, 547 U.S. 319 (2006). This holding ignores the rules regarding Brady evidence and imposes the higher Strickland standard on a Brady claim. It cannot be disputed that Johnson's pending charges were impeachment information. See also Giglio v. United States, 405 U.S. 150 (1972); Reutter v. Solem, 888 F.2d 578, 580-82 (8th Cir. 1989) (finding a Brady violation where prosecutors failed to disclose that key witness had pending petition for commutation of his sentence). Furthermore, the absence of a deal on pending charges is even more prejudicial impeachment evidence because it "suggests the witness will testify more favorably to the State's position." State v. Mizzell, 349 S.C. 326, 332-33, 563 S.E.2d 315, 318 (2002). It is reasonable

to believe that a witness would "have felt that the quality of his cooperation would determine the degree of benefit he would later receive." Id.

The importance of this information is highlighted by Solicitor Bailey's closing argument. Chaffee v. State, 294 S.C. 88, 91-92, 362 S.E.2d 875, 877 (1987). Solicitor Bailey falsely told the jury, **"You hadn't heard any testimony about Hiram Johnson having any kind of charge against him or any kind of a deal with the state, any reason to say something wasn't true."** App. 4474. ll. 3 – 11. The solicitor's emphasis on Johnson's neutrality demonstrates beyond cavil the materiality of this evidence. Without this impeachment evidence, petitioner did not receive a fair trial resulting in a verdict worthy of confidence. Kyles, 514 U.S. at 434.

The Brady Errors Must be Considered in the Aggregate

The PCR court also failed to consider the cumulative effect of the state's failure to disclose these key pieces of evidence. When considering Brady materiality, the suppressed evidence must be "considered collectively, not item by item." Kyles, 514 U.S. at 436-37. "[A] showing of materiality does not require demonstration by a preponderance that disclosure would have resulted ultimately in the defendant's acquittal." Id. at 434. "A defendant need not demonstrate that after discounting the inculpatory evidence, there would not have been enough left to convict." Id. at 434-35.

When these three key pieces of evidence are considered together, the cumulative effect is that no confidence can be had that petitioner received a fair trial. The state suppressed the fact that its star witness had confessed to a police investigator. The state suppressed the fact that its star witness had blackouts, memory problems, and heard voices and beeping noises. Finally, the solicitor suppressed the fact that a witness it told the jury had no pending charges was, in fact, being prosecuted by his office. This misrepresentation to the jury should greatly concern this

Court. It is disturbing that the state's conduct shows a pattern of concealing evidence, threatening witnesses, and claiming that it did not know about the untruths in its primary witnesses' testimony. Enforcing the Brady rule in this case "will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations." Id. at 440. The Court should reverse the PCR court's ruling and grant petitioner a new trial.

5.

Trial counsel rendered ineffective assistance of counsel because counsel had a conflict of interest between two of her clients -- Petitioner Bowman and Ricky Davis -- that caused counsel to fail to call Ricky Davis as a witness, despite Davis' statement that exculpated Petitioner Bowman and established Gadson shot the victim.

The PCR court erred in determining that the actual conflict of interest of Petitioner Bowman's co-trial counsel, Marva Hardee-Thomas did not amount to ineffective assistance of counsel. At the time she represented petitioner, Thomas also had an attorney-client relationship with Ricky Davis ("Davis"). App. 8967. Davis executed a written statement, stating Davis heard James Tawain Gadson confess to shooting the victim and handing the murder weapon over to petitioner. App. 8966. Davis executed the statement prior to turning state's evidence and accepting a plea deal **in this matter** from the State. Id.. Despite this critical, exculpatory evidence on behalf of petitioner, Thomas failed to call Davis as a witness at trial. App. 7302. Thomas failed to present this critical testimony because of a conflict of interest created by her representation of Davis and petitioner.

Counsel's simultaneous obligations to both petitioner and Davis constituted an actual conflict of interest that affected her performance. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)). As this Court has explained, "[a]n actual conflict of interest occurs where an attorney owes a duty to

a party whose interests are adverse to the defendant's." Id. at 143-44, 551 S.E.2d at 256 (citing Jackson, 329 S.C. at 354, 495 S.E.2d at 773).

"The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client" [citation omitted] Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). A defendant does not need to show prejudice if there is an actual conflict of interest. *Id.* See, also, Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (quoting Zuck v. Alabama, 588 F.2d 436, 439 (5th Cir. 1979)).

The case of State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005) is instructive on the situation involved here. In Gregory, this Court found counsel, who was representing the defendant on criminal sexual conduct with a minor charges, had a conflict because he represented an assistant solicitor in her divorce action; the assistant solicitor had initially prosecuted the case even though by the time of trial, the solicitor had been replaced. Still, this Court found:

> The question in this case is whether defense counsel owed duties to a party whose interests were adverse to Gregory. Under this Court's holding in Duncan[281 S.C. at 438, 315 S.E.2d at 811 (1984)], and the case cited therein, Zuck v. Alabama, we find that he did. In Zuck v. Alabama, the Fifth Circuit Court of Appeals held that where the law firm retained to represent the defendant in a murder trial also represented the state prosecutor in an unrelated civil trial, there was an actual conflict of interest, and the conflict rendered the trial fundamentally unfair. The court noted that "the basis of these decisions is our belief that the sixth amendment requires that **a defendant may not be represented by counsel who might be tempted to dampen the ardor of his defense in order to placate his other client. . . . This possibility is sufficient to constitute an actual conflict as a matter of law.**" 588 F.2d at 440 (emphasis in original).

Where an actual conflict is shown, the aggrieved party "need not demonstrate prejudice in order to obtain relief." Cuyler v. Sullivan, 446 U.S. 335, 349-50 (1980); Holloway v. Arkansas, 435 U.S. 475, 487-91 (1978).

An actual conflict of interest can undoubtedly arise when an attorney represents two parties simultaneously. Courts from around the country hold that simultaneous representation of both the criminal defendant and a defense witness may give rise to an actual conflict of interest. See, e.g., United States v. Moscony, 927 F.2d 742, 750 (3d Cir. 1991) ("Conflicts of interest arise whenever an attorney's loyalties are divided and an attorney who cross-examines former clients inherently encounters divided loyalties") (citations omitted)); Louisiana v. M.M., 802 So. 2d 43, 68 (La. Ct. App. 2001) ("Nevertheless, [conflicting loyalties] may also arise when an attorney has to cross-examine a State witness or call a defense witness who the attorney represents in another litigation"); Massachusetts v. Walter, 487 N.E.2d 513, 517 (Mass. 1986) ("We nevertheless agree that where an attorney simultaneously represents both a criminal defendant and a possible defense witness, the potential for a serious conflict does exist."); Tennessee v. Franklin, No. W2009-01087-CCA-R3-CD, 2010 Tenn. Crim. App. LEXIS 457, 23 (Tenn. Crim. App. June 3, 2010) ("[A] conflict of interest may arise not only in simultaneous representation cases but also in cases of successive representation 'when an attorney who once represented a co-defendant or witness currently represents the accused.'" (citation omitted)).

This is precisely the situation in this matter. An actual conflict existed because trial counsel represented petitioner and Davis. As noted, Thomas had an attorney-client relationship with Ricky Davis. Counsel was appointed to represent Davis on two separate armed robbery charges in 2001. App. 8967. In October of 2001, Davis was tried by jury, convicted of one count of armed robbery, and sentenced to twenty years. App. 8980. His second indictment was

nol prossed on October 18, 2001. App. 9291-92. Thomas filed a notice of appeal on Davis's behalf on October 24, 2001. App. 9306. Nevertheless, her obligations to Davis did not cease because the solicitor certainly retained discretion on whether to recharge Davis for the matter that was nol prossed. Thomas admitted this concern in her testimony at the PCR hearing. App. 7288-89.

Without contraction, Thomas admitted a conflict between petitioner and Davis existed. When asked whether she thought there would have been a conflict had she spoken to Davis and had he confirmed that his statement was true, Thomas admitted that "there is a bigger conflict that would arise with regard to representation of Marion [Bowman]." App. 7332. As she explained, the dual representation would have led to "trying to help Mr. Bowman but not hurt my aspect with Mr. Davis because I still have an ethical responsibility with him also." App. 7333. When asked if she "would not have decided not to call Ricky Davis to protect him, to the detriment of Mr. Bowman, you didn't do that, did you? Thomas answered: "No, I wouldn't put anybody in that predicament." App. 7334.

Regardless, Davis was not called as a witness at petitioner's trial. Thomas failed to do so despite the exculpatory nature of the statement.[4] When asked why Davis did not testify that he heard Gadson confess to shooting the victim, counsel testified: "I don't know." App. 7302. Counsel also acknowledged she did not have any strategic reason for not putting Ricky Davis on the stand to testify that he had heard Gadson's confession. App. 7302.

Despite the exculpatory written statement, Thomas did not even recall speaking to Davis directly. App. 7331. In fact, not only did Thomas fail to call Davis, Thomas could not

[4] Thomas acknowledged, in her testimony at the PCR hearing, that her handwriting was on the notary block, which was not filled out. App. 7294, 7331.

remember even discussing Ricky Davis with her capital client, petitioner, much less detailing the former attorney-client relationship with petitioner. App. 7294. This constituted ineffective assistance of counsel.

Thomas' conflict stemmed from the fact that she had legitimate concerns about Davis's second armed robbery charge which was nol processed. As the Supreme Court of South Carolina has explained, when a charge is nol processed it is extinguished. Mackey v. State, 357 S.C. 666, 668, 595 S.E.2d 241, 242 (2004). However, "'if the nolle prosequi is entered prior to the jury being empanelled and sworn, there is no bar to future prosecution for the same offense because the innocence or the guilt of the defendant would not have been adjudicated.'" Id. (quoting State v. Patrick, 318 S.C. 352, 457 S.E.2d 632 (1995)). Therefore, in situations where charges are nol prossed before a jury has not been empanelled and sworn, the solicitor would be free to bring the charges against the defendant again. Davis' situation presented that exact scenario.

First, if Thomas had called Davis to testify at petitioner's trial, she ran the risk of the solicitor seeking to impeach Davis regarding his armed robbery conviction. The very real chance also existed that Davis may have discussed the second charge[5] instead of his conviction and stated something detrimental on the stand that could be used against him by the solicitor in deciding whether to re-file the charge. As the Mackey case explains, the solicitor clearly maintained that right to charge Davis again. Counsel had already assisted Davis in avoiding this charge once, and there would be a strong motivation to keep Davis off the stand regardless of the context to avoid any chance of it being brought again. Second, counsel likely felt that there was

[5] The conviction and the second charge were disposed of around the same time; hence, the chance that Davis could testify as to the second charge.

a potential for retribution if Davis was called. Davis was a potentially exculpatory witness who made a clear statement that petitioner was not the shooter and that the state's primary witness against Bowman was actually the murderer. App. 8966. There was certainly the potential that the solicitor would simply recharge Davis if he was called at petitioner's trial. Counsel had a duty to keep Davis from testifying or helping the defense in any way, as it could have resulted in renewed charges being brought against him. This is in direct conflict with her duty to zealously represent petitioner and provide effective counsel. Such an inherent conflict undoubtedly had a negative impact on her performance at trial, evidenced by the complete failure to call Davis.

Ricky Davis was convicted of one armed robbery charge and had the second nol processed. The second charge was dropped on October 18, 2001. Thomas represented Davis in both instances. Not long after, she was also appointed to defend petitioner at trial. As shown above, these clients' interests were adverse to one another. As the recognized by the above-authority, Thomas's dual representation of petitioner, and a potential defense witness, Davis, sufficiently established an actual conflict of interest. It is evident that the standard for establishing prejudicial conflict has been met in this case. If petitioner had been made aware of the prior attorney-client relationship and advised of the adverse interests, he would have likely objected to Thomas's representation. Due to the existence of an actual conflict, petitioner should not be required to show prejudice resulting from this conflict.

However, even if this Court were to require a prejudice analysis, petitioner was prejudiced due to counsel's reluctance to call Davis and failure to advise petitioner of the attorney-client relationship. The conflict of interest, whether actual or potential, related directly to the heart of the case and cannot constitute harmless error. Our Supreme Court very recently

held that error related directly to the central issue of a case cannot constitute harmless error. In Sulton v. Health South, 400 S.C. 412, 734 S.E.2d 641 (2012), the Court addressed an erroneous jury charge that incorrectly elevated the duty of care owed by a hospital on the seminal issues of the case. The Supreme Court held that, despite the harmless error approach to review of jury instructions, the error could not be harmless because it went to the heart of the case. The court held remand was warranted because the error on the key issue caused the defendant to suffer prejudice. Id. at 418, 734 S.E.2d at 644-45.

This matter is analogous to the court's logic and rationale in Sulton. The identity of the shooter constituted the critical issue in this matter. Whether petitioner's counsel excluded potentially exculpatory testimony due to a conflict of interest directly affected that critical issue in the matter. If counsel should not have represented petitioner, as was the case, his right to effective counsel was violated. It was critical that the trial court, and the PCR court, hear Davis' exculpatory testimony to ensure that petitioner received adequate representation, especially in light of the fact that the state sought the death penalty against petitioner. Thomas's improper representation of petitioner prejudiced him significantly. Accordingly, Thomas provided ineffective assistance of counsel, and the PCR court should have granted petitioner post-conviction relief.

6.

Defense counsel was ineffective for failing to object to the solicitor's examination of James Aiken regarding favorable prison conditions and recreational facilities available to inmates since this Court had long ago in *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984), held such evidence was impermissible because it did not relate to the character of the defendant or the nature of his crime. This evidence was highly prejudicial in the eyes of the jury, and the failure to object to it properly at trial also barred consideration of this winning issue on petitioner's direct appeal.

Correctional Consultant James E. Aiken was qualified as an expert witness for the defense in the fields of prison adjustment and future dangerousness. App. 4832, l. 22 – 4838, l. 10. On cross-examination, the solicitor questioned Aiken about petitioner having received a youthful offender act (YOA) sentence in the past. Aiken acknowledged that the purpose of a YOA sentence was to rehabilitate the youthful offender, and that petitioner had "flunked out" because he was unable to comply with the mandates of the program. App. 4847, l. 1 – 4848, l. 3. Aiken also admitted there was a "use of force" report regarding a fight petitioner had while serving his YOA sentence was being served at Stevenson Correctional Institution. App. 4848, l. 8 – 4849, l. 2.

The solicitor had Aiken acknowledge that inmates can work while inside the correctional facility. The solicitor also asked Aiken to also admit that inmates were allowed to leave the correctional facility and pick up trash on the side of the road. This drew an objection form defense counsel because "that's clearly not available here and it's not proper." App. 4857, l. 22 – 4858, l. 6.

The solicitor then asked Aiken to admit that even an inmate serving a life without parole sentence could still work. Aiken answered, "If you're going to be in prison, you're going to work." App. 4862, l. 2 – 4864, l. 11. On re-direct examination, Aiken said there was not any way a person serving a life without parole sentence would be allowed outside the prison to pick up trash. App. 4864, l. 16 – 4869, l. 3.

Immediately on re-cross examination, the solicitor focused on escape and prison conditions. The solicitor noted that Aiken had said petitioner would never get out of prison and he then asked him how many inmates had escaped during the time he was affiliated with the South Carolina Department of Corrections. Defense counsel's objection to this escape testimony was sustained. App. 4869, l. 13 – 4970, l. 11.

The solicitor then requested permission to question Aiken about "conditions of general population, the work conditions he's already gotten into." The defense's only objection was that such questioning would occur on re-cross examination. Defense counsel did not object on the grounds that such prison conditions evidence was inadmissible. App. 4873, l. 21 – 4874, l. 19.

The solicitor then questioned Aiken extensively about what an inmate's "routine" in prison. Aiken then admitted to the solicitor that inmates not in "super max" were able to work, and they were compensated for their work. When the solicitor asked how much inmates were paid, Aiken said he thought they made three dollars, four dollars, or five dollars, but he admitted he was not exactly sure how much they were paid for their work. App. 4878, ll. 11-24.

The solicitor then questioned Aiken about an inmate did in prison when he was not working. Aiken answered that inmate got up in the morning, had breakfast, then went to work, took a recess break "in the middle of the day, lunch break, to eat as provided by the constitution, and of course go back to work and then eat in the evening. And a person can involve himself in

bible study, a person can involve himself in education, a person can involve himself in anger management and other things that are provided within the correctional environment. That's one routine." App. 4878, l. 11 – 4880, l. 14.

Aiken then attempted to explain that inmates were constantly being watched during their activities, and they were written up for administrative violations. The solicitor objected: "Your Honor, I think he's not being responsive to my question. I was simply asking him about conditions of the prison that he had testified about and he's going off into a speech. I would like him to respond. So I've tried to ask simple questions and get direct answers." App. 4878, l. 11 – 4880, l. 14.

Defense Counsel Cummings responded: "I think the gentleman was trying to answer, Judge." The judge partially agreed: "I think he is trying to answer" but instructed Aiken to listen to the question and answer it fully "but if you could be mindful to remember brevity I would appreciate it." App. 4880, ll. 14-25. The following exchange then occurred with Aiken and the solicitor:

> Mr. Aiken: I'll just answer the question like this. I gave the daily routine, but you have to understand that you are doing it around very dangerous people that use violence to resolve issues. And that gives a better picture of what it means living in prison.
>
> Mr. Bailey: All right, sir. And are there recreational facilities available?
>
> Mr. Aiken: Yes, sir.
>
> Mr. Bailey: What type of recreational facilities?
>
> Mr. Aiken: An inmate can play basketball, an inmate can exercise, you know, on his own, but to understand, again, to give it in a complete context as briefly as I can, you're doing it around very dangerous predator people.

Mr. Bailey: My question is related to the recreational facilities and we understand prison is dangerous people. In addition to that are there libraries they go to, to read books?

Mr. Aiken: Yes, sir. As guaranteed by the constitution.

Mr. Bailey: Are there movies they can watch?

Mr. Aiken: Yes, sir.

Mr. Bailey: Television?

Mr. Aiken: In some instances, yes, sir.

Mr. Bailey: Softball, do they play softball?

Mr. Aiken: I don't know. It's some type of recreation such as that.

Mr. Bailey: Thank you. That's all I have.

App. 4881, l. 1 – 4882, l. 3.

In his closing argument the solicitor reminded the jurors about the testimony of James Aiken. The solicitor said Aiken was "a very knowledgeable person, I had some trouble getting him to answer some questions, but I would concede he's very knowledgeable, he's an expert in prison adjustment. The solicitor noted that Aiken did say that petitioner could adjust well to prison. App. 4965, ll. 3-15. However, the solicitor urged the jury what its focus should be based on Aiken's testimony:

> But when you're talking about adaptability to prison environment, you need to know what that environment is like. And he told you all a little bit about it, Mr. Aiken. I asked him about the prison environment, you work, you get paid some degree of money, some amount of money for working, that after work there are recreational opportunities available, he said **they could play basketball, they had a library where they could read books, movies, television. In the meantime, Kandee Martin's in her grave and she'll be there forever**.

App. 4965, l. 16 – 4966, l. 2. (emphasis added).

On direct appeal to this Court, undersigned counsel argued the following on direct appeal regarding this issue:

> The court abused its discretion by allowing the solicitor on re-cross examination of James Aiken to examine him about conditions in general population. Recreational facilities, watching movies, watching television and reading books were matters not raised by any relevant evidence, and the jury's sole concern was supposed to be with whether appellant should be sentenced to death or life imprisonment without parole.

In State v. Bowman, 366 S.C. 485, 498-499, 623 S.E.2d 378, 385 (2005) this Court held the issue was procedurally barred – the only objection was improper re-cross examination -- but again warned the bench and bar that such prison conditions evidence was improper:

> Appellant argues the trial court erred by allowing the State, on re-cross examination, to ask Aiken about prison conditions.
>
> We find this issue is not preserved for review because appellant did not raise this issue to the trial court before the testimony was presented and did not make a contemporaneous objection when the testimony was actually elicited. Further, the trial court did not rule on this issue as now stated by appellant. See State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004) (to be preserved for appeal, issue must be raised to and ruled on by trial court); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (party cannot argue one ground below and then argue different ground on appeal). See also State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005) (to preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court).
>
> We take this opportunity, however, to caution the State and the defense that the evidence presented in a penalty phase of a capital trial is to be restricted to the individual defendant and the individual defendant's actions, behavior, and character. Generally, questions regarding escape and prison conditions are not relevant to the question of whether a defendant should be sentenced to death or life imprisonment without parole. We emphasize that how inmates, other than the defendant at trial, are treated in prison; and whether other inmates have escaped from prison, is inappropriate
> evidence in the penalty phase of a capital trial. We admonish both the State and the defense that the penalty phase should focus solely on the defendant and any evidence introduced in the penalty phase should be connected to that particular defendant.

In his application for post-conviction relief filed April 7, 2006, petitioner Bowman alleged his attorney was ineffective for failing to object to inadmissible "good prison conditions" evidence, and to preserve the issue for direct appeal. App. 1571. Petitioner continued to assert the failure to object to this prison conditions issue evidence as a PCR issue in subsequent pleadings. App. 5681-5682; App. 5694-5695; App. 5715-5716.

PCR counsel questioned defense counsel about the prison conditions evidence during the evidentiary hearing. Defense counsel stated that "it's been the same argument throughout the last ten years in this state, what are its present conditions, and the Supreme Court is coming out telling the solicitor to stop it, and defense attorneys, you can't sell it to the jury anymore, that it ain't the life of a picnic anymore." Trial counsel added:

> For God's sake, we have all tried to show LWOP means life without possibility of parole, and every Solicitor, and **I would do it myself if I was still prosecuting**, *he gets to watch TV, Kandee is dead, he gets to eat, she doesn't, and he gets to have recreation in the yard, she doesn't*, and then in the heat of that stuff, Mr. Bailey and I were going at it, you read the transcript. You should have been there.

App. 7450, ll. 3-12. (emphasis added).

When PCR counsel reminded trial counsel that this Court had held this very evidence introduced an arbitrary factor into the sentencing proceeding, counsel responded: "Isn't that nice of them, but how else do you argue about somebody having a chance to live in prison? I mean, I don't argue academically." App. 7449, l. 21 – 7450, l. 22.

PCR counsel then asked trial counsel why he did not object to the prison conditions evidence:

> Mr. Brown: [M]y question is why didn't you object when Mr. Bailey brought it out so he couldn't talk about it at all anymore?

Mr. Cummings: Maybe I just didn't remember to do that because we were still fighting with each other by the side of the table, or the judge, and you have to read what I was doing.

Mr. Brown: That's fine, I'm just asking if you had a reason.

Mr. Cummings: *There is not reason that a lawyer misses an objection, he misses it.*

App. 7451, l. 15 – 7452, l. 1. (emphasis added).

After this question, a colloquy occurred between the assistant attorney general and PCR counsel and the court. PCR counsel argued that trial counsel was ineffective for failing to preserve this issue for appeal "because it would have been reversed" if they had preserved the issue. App. 7453, l. 1 – 7460, l. 19. Trial counsel then responded: "It was on re-cross and again, if I made an error, if I made a mistake, that man, respectfully, should get the benefit, I just want to apologize." App. 7462, ll. 18-21.

The assistant attorney general attempted to distinguish this case from State v. Burkhart, 371 S.C. 482, 640 S.E.2d 450 (2007), by arguing that defense counsel in this case "opened the door" to the prison conditions evidence. Obviously recognizing that Burkhart decided the prison conditions evidence introduced an impermissible arbitrary factor into the case, he urged: "I think in the context of ineffective assistance we still have a prejudice prong as well." App. 7460, l. 24 – 7461, l. 12.

In petitioner's brief supporting his fourth amended application for post-conviction relief, which the judge permitted counsel to file as a post-hearing brief, counsel again made a succinct argument on the prison conditions issue. App. 9546 - 9547. Counsel noted the trial prison conditions evidence and the fact defense counsel did not make a contemporaneous objection to this impermissible evidence. Counsel also pointed out the fact that defense counsel during PCR hearing did not offer any strategic reason for his failure to object. App. 9546 – 9547. Counsel

noted "in Burkhart, the Court *reaffirmed the long standing rule that evidence admitted in the sentencing phase of a capital trial must be limited to either character evidence of the defendant or the circumstances of the crime.*" App. 9547. (emphasis added). Counsel noted that petitioner's jury sentenced him to death while considering the arbitrary factor of this "good" prison conditions evidence . . ." App. 9547.

In his order denying petitioner's application for post-conviction relief filed March 12, 2012, the judge found that the defense "opened the door" to the good prison conditions evidence. Supp. App. III 101-121. The order acknowledged that this Court procedurally barred this issue in State v. Bowman, 366 S.C. 45, 623 S.E.2d 378 (2005), but sought to distinguish it from State v. Burkhart, 371 S.C. 482, 640 S.E.2d 450 (2007), by arguing the solicitor called a witness in his case in chief in Burkhart about prison conditions. Supp. App. III 105-107. The order of dismissal continued to make the Attorney General's argument that seemingly because of Kelly v. South Carolina, 534 U.S. 246 (2002), and the two cases that preceded it, Simmons v. South Carolina, 512 U.S. 154 (1994) and Shafer v. South Carolina, 532 U.S. 36 (2001), which held that evidence of future dangerousness as a matter of due process mandated a jury instruction that life meant "life without parole" constituted a "new legal setting" that allegedly now allows the admission of evidence on the "routine" of daily prison life to counter adaptability evidence in some way. Supp. App. III 105.

The order also found defense counsel had a "strategic" reason not to object to this evidence because he wanted to emphasize "the harsh conditions of prison" to the jury and he fully expected the solicitor to respond with the good conditions in prison. Supp. App. III 107-109. As petitioner demonstrates infra, trial counsel's reasons are in error. This Court has consistently emphasized that penalty phase evidence must concentrate on the character of the

defendant and the circumstances of his crime. Consequently, the ruling that defense counsel here "opened the door" to evidence of general prison condition evidence is actually an additional finding of ineffectiveness. This is not a direct appeal. This ruling reinforces the admitted ineffectiveness of counsel, and his demonstrated lack of awareness concerning long-standing binding precedents of this Court. It ignores the fact such evidence has nothing to do with petitioner's character or the circumstances of his crime, or any matter within his control and it is inadmissible.

For this and other reasons, petitioner now seeks a writ of certiorari from this Court.

Discussion

Defense counsel testified at the PCR hearing that if he was still prosecuting cases he would have done exactly what the solicitor in this case did. He would have presented evidence and argued that Marion Bowman would be allowed to watch television, have recreation, go the library and have other amenities while the victim was dead in her grave as a result of the murder. "He gets to eat, she doesn't, and he gets to have recreation in the yard, she doesn't," as defense counsel testified at the PCR hearing. App. 7450, ll. 3-12. Defense counsel had no appreciation of the fact that this Court has long held that evidence of prison conditions and execution did not constitute proper jury considerations. State v. Atkinson, 253 S.C. 531, 172 S.E.2d 111, 112 (1970); State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984).

In Plath, this Court noted that the Department of Corrections controls the conditions of imprisonment and not the defendant. "This determination as to the time, place, manner, and condition of execution or incarceration . . . are reserved by statute . . . to agencies other than the jury. As we have repeatedly stated, the sole function of the jury in a capital sentencing trial is the individualized selection of one or the other penalty, based on the circumstances of the crime

and the characteristics of the individual defendant." State v. Plath, 281 S.C. at 15, 313 S.E.2d at 627.

This Court in petitioner's case on direct appeal in State v. Bowman procedurally barred this prison conditions issue as seen supra, and reminded the bench and bar that evidence such as that offered during petitioner's trial was improper. Defense counsel's only objection at trial was that the evidence was being offered on re-cross examination. Evidence offered on re-cross examination is within the sound discretion of the judge where the objection should have been, as a matter of law, that the evidence the solicitor intended to elicit was improper and inadmissible. While objecting only on the basis that the solicitor was presenting the prison condition evidence on re-cross examination, defense counsel framed the issue as simply one vested to the sound discretion of the trial court since the right to, and scope of, re-cross examination is purely a discretionary matter. See Liberty Mutual Insurance Company v. Gould, 266 S.C. 521, 533, 224 S.E.2d 715, 720 (1976); State v. Singleton, 179 S.C. 184, 183 S.E. 910 (1936).

As the Chief Justice, while arguing against automatic reversal based upon the arbitrary statutory factor, wrote in her dissent in State v. Burkhart, 371 S.C. 482, 494, 640 S.E.2d 450, 456 (2007)::

> Our pronouncement disfavoring this evidence in Bowman was nothing new. See Plath, 281 S.C. at 15, 313 S.E.2d at 627 ("It should not be necessary in the near future ... to remind the bench and bar of the strict focus to be maintained in the course of a capital sentencing trial."); and Smart, 278 S.C. at 526, 299 S.E.2d at 692-93 ("While this Court approves zealous representation ... it is important in capital cases to maintain strict focus upon the particular characteristics of the specific crime and the unique attributes of the defendant."). In reversing this case, I believe we treat the disapproval of this type of evidence as though it were a novel development, and that we unnecessarily depart from an established course of analysis that is easily tied to defined doctrines. In my view, reversing Appellant's sentence uses Bowman to propagate a rule that inappropriately presumes prejudice in many cases and is unjustified given the existing constitutional framework.

State v. Burkhart, 371 S.C. 482, 494, 640 S.E.2d 450, 456 (2007).

As seen above, defense counsel belatedly admitted at the PCR hearing that there could not be any excuse, reason or strategic reason to justify his failure to object to this prison condition evidence if it was inadmissible. Regardless, it is clear defense counsel erroneously thought that petitioner's day to day life in prison routine was a proper matter for the jury's consideration.

Counsel's failure to understand the law in this area allowed the solicitor to capitalize on the prison condition evidence that was admitted without objection to argue that petitioner would enjoy playing basketball and watching television in prison while the victim remained dead in her grave. That was a powerful argument and it is improper. As early as State v. Atkinson, 253 S.C. 531, 172 S.E.2d 111, 112 (1970), this Court held:

> The legislature committed to the jury the responsibility to decide in the first instance whether the punishment should be life or death. It charged another agency with the responsibility of how a life sentence should be executed. The jurors perform their task completely when they decide the matter assigned to them upon the evidence before them. *What happens thereafter is of no concern of theirs.* (emphasis added).

The solicitor painted the jury a picture here of life in prison as a relaxing experience where inmates work, play basketball, watch television and go to the library. That certainly would not sound like severe punishment to many jurors for a murderer.

However, as this Court has repeatedly held, punishment in a death penalty trial must be focused on the character of the defendant and the circumstances of his crime. Sentencing a defendant to death based upon the jury's perception of what life imprisonment is like behind the prison walls introduces an impermissible arbitrary factor into the sentencing phase. See State v. Burkhart, supra.

The state in this case continued to urge upon the PCR court that if the defendant introduces evidence that the defendant can adapt to prison that this opens the door to introduce evidence and argument that the defendant is allegedly adapting to a relaxing prison life and routine. That was a fallacious argument.

Skipper v. South Carolina, 476 U.S. 1 (1986) held that evidence that a particular defendant can adapt to prison must be allowed because it is evidence in mitigation that a jury must be allowed to consider as a reason to impose a sentence of less than death. See Eddings v. Oklahoma, 455 U.S. 104 (1982); Lockett v. Ohio, 438 U.S. 586 (1978).

While the refusal to allow prison adaptability in the lower court in Skipper was based upon the precedent at the time, State v. Koon, 278 S.C. 528, 298 S.E.2d 769 (1982), there should be no serious argument that Skipper v. South Carolina prison adaptability mitigating evidence relating to a particular defendant on trial "opened the door" to evidence of favorable prison conditions and a relaxing daily routine in prison in response. This Court has long held such inadmissible. Such evidence simply is irrelevant to the character of the defendant or the circumstances of his crime.

Further, a death sentence imposed where a defendant has no opportunity to explain or deny information which forms the basis for that sentence - - here the changing rules and regulations of the Department of Corrections under which inmates must live - - denies the defendant his right to due process. See Gardner v. Florida, 430 U.S. 349 (1977). Petitioner had and has no control over the conditions in prison that he must live by as a result of his conviction. Those rules, as petitioner argued in his procedurally barred argument on direct appeal, are often left to the discretion of the Director of the Department of Corrections in power at the time, and perhaps public sentiment at the time. See Brief of Appellant at Supp. App. 27.

Had trial counsel made the proper objection to the prison condition evidence and argument at trial there is no reason to believe that petitioner would not have been granted a new sentencing trial in his appeal, State v. Bowman, 326 S.C. 485, 623 S.E.2d 378 (2005), where this issue was procedurally barred instead. Petitioner submits that this prison conditions evidence presented an arbitrary factor into the case that mandates a new sentencing trial in the same manner as if the issue had been preserved for direct appeal. See State v. Burkhart, supra.

However, should the court conduct a prejudice analysis beyond the arbitrary factor, petitioner strongly asserts that under Strickland v. Washington, 466, U.S. 668 (1984) that this highly prejudicial evidence that the solicitor fully capitalized on during his closing argument mandates a new sentencing hearing. As this Court held in State v. McClure, 342 S.C. 403, 409, 537 S.E.2d 273, 275 (2000), the evaluation of the consequences of an error in the sentencing phase of a capital trial is more difficult because of the wide discretion that is given to the sentencing jury. A capital jury can recommend a life sentence **for any reason or no reason at all.**

The solicitor's examination of Dr. Aiken successfully painted the erroneous picture that life imprisonment is a tranquil experience because an inmate, here petitioner, would be able to work, have recreation, watch television, go to the library, and play basketball. It is hardly a leap to assert that this evidence and the solicitor's powerful argument capitalizing on it was a factor in at least one juror's decision to not choose a life sentence. See Chaffee v. State, 294 S.C. 88, 362 S.E.2d 875 (1987)(Solicitor took advantage of evidentiary error in closing argument in a capital sentencing proceeding, error was not harmless). This Court should respectfully grant certiorari on this issue.

7.

Petitioner's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under state law were violated because the trial judge failed to properly consider his application as evidenced by the PCR court's wholesale adoption of the state's proposed order.

The PCR court adopted the state's proposed order with no changes. Compare Supp. App. 142 – 286 with Supp. App. III 5-149. Petitioner noted this problem in his Rule 59(e) motion. App. 9953. The last date the PCR court heard testimony was December 22, 2008. App. 7749. The state's proposed order was submitted on June 17, 2011. Judge Lockemy signed it on February 27, 2012. Supp. App. III 149. The Court should note that the only change appears to be overwriting "2011" with "2012." Supp. App. III 149.

This Court has on two occasions warned PCR judges against wholesale adoption of proposed orders. In Pruitt v. State, the Court stated:

> We take this opportunity to express our concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant. . . . Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to the issuance of the order, and the PCR judge should carefully review the order prior to signing it.

310 S.C. 254, 255-56, 423 S.E.2d 127, 128 (1992). Despite the Court's admonishment in Pruitt, the practice continued. This Court again was forced to address this issue in Hall v. Catoe, stating:

> Although we strongly encourage PCR judges to draft their own findings of fact and conclusions of law in death penalty cases, we also acknowledge that in all other cases, it is common practice for judges to ask a party to draft a proposed order for the sake of efficiency.

360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004).

Just like this Court, the United States Supreme Court recognizes that wholesale adoption of proposed orders in capital cases raises serious questions about the fairness of the process and a trial court's factual findings. Jefferson v. Upton, ___ U.S. ___, 130 S.Ct. 2217, 2223 (2010). In Jefferson, the state PCR court adopted an *ex parte* proposed order verbatim.[6] Id. at 2222. The Supreme Court remanded the case based solely on the impropriety of the PCR court's actions. Id. at 2223. The Court stated, "Although we have stated that a court's 'verbatim adoption of findings of fact prepared by the prevailing parties' should be treated as findings of the court, we have also criticized that practice." Id. (quoting Anderson v. Bessemer City, 470 U.S. 564, 572 (1985)).

Other state courts also expressly disapprove of the verbatim adoption of proposed orders in capital cases. "We cannot . . . in this post-conviction case involving a review of the propriety of a death sentence, condone the wholesale adoption by the post-conviction court of an advocate's brief." Commonwealth v. Williams, 732 A.2d 1167, 1176 (Pa. 1999); see also Dobyne v. State, 805 So.2d 733, 741 (Ala. Crim. App. 2000) (criticizing practice and quoting Anderson); Dukes v. State, 621 N.W.2d 246, 258-59 (Minn. 2001) (criticizing practice).

A state PCR court must engage in a "probing and fact-specific analysis" in capital cases. Sears v. Upton, ___ U.S. ___, 130 S.Ct. 3259, 3266 (2010). Just as in Jefferson, and in violation of this Court's strictures concerning proposed orders, the verbatim adoption of a proposed order demonstrates petitioner did not receive a full and fair hearing as required by the Eighth and Fourteenth Amendments.

The proper remedy in this case is a *de novo* review of the evidence in this case or, in the

[6] The proposed order in this case was not solicited or provided *ex parte*, but this should not change the Court's analysis.

event petitioner is not granted a new trial after a *de novo* review, a remand for a new post-conviction relief hearing. The Court should not apply the deferential "any evidence" standard normally used in PCR cases. Not only has this occurred in petitioner's case, but it is occurring in other capital PCR cases. This same issue was raised in Marion Lindsey v. State, which is currently pending before this Court. In Lindsey, it appeared that the PCR judge did not even read the proposed order before signing it. See also Charles O. Shuler v. State, CA No. 2003-CP-38-0359, Order filed Jan. 9, 2013, Denying Rule 59 SCRCP/Motion to Alter or Amend Judgment. Shuler was a capital PCR. Shuler raised the issue of the PCR court's wholesale adoption of the state's proposed order. Id. at 4-5. Shuler passed away before an appeal from his PCR could be heard. It is manifestly clear that the problems recognized by this Court in Pruitt and Hall persist and are not unique to petitioner's case. See Sammie Louis Stokes v. state, CA No. 2001-CP-38-1240, Order filed Feb. 19, 2013, Denying Rule 59 Motion and Denying Motion to Appoint New Counsel at 3-7 (addressing wholesale adoption of state's proposed order).

It appears that this Court's instructions to circuit judges in capital PCR cases continue to be ignored. Without some adverse consequence, circuit judges and the Attorney General have no incentive to see that orders in capital cases are drafted by the court. What is even more troubling is that this error has occurred in an order signed by one of this state's best judges. Appellate counsel for petitioner have great respect for Judge Lockemy, both as a trial judge and as an appellate judge. He is a fair, smart, and hard-working judge. The disparity between Judge Lockemy's unquestioned judicial ability and the errors in the order should be attributed to the systemic fault that is resulting from circuit judges' continued reliance on the Attorney General's office to draft their orders in these cases. Writing an order in a capital PCR case requires discipline of thought and judgment. The process of writing the order helps ensure the careful

consideration of the evidence and the law by a neutral arbiter instead of an adversarial party. This Court should use this case to reiterate its prior commands that this practice must end.

CONCLUSION

By reason of the foregoing arguments a writ of certiorari should be granted to allow full briefing on these issues.

Respectfully submitted,

By: _____

Robert M. Dudek
Chief Appellate Defender

David Alexander
Assistant Appellate Defender

Michael Anzelmo, *pro bono*
Nelson Mullins Riley & Scarborough, LLP

ATTORNEYS FOR PETITIONER

This 30th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County
James E. Lockemy, Circuit Court Judge

MARION BOWMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213468

CERTIFICATE OF SERVICE

I certify that a true copy of the Amended Petition for Writ of Certiorari has been served on Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of April, 2014.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of April, 2014.

Rhonda Denise Farnsworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021

Exhibit 3

p. 31

p. 34

AFFIDAVIT OF ROBERT L. MINTER

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF CHARLESTON)

I, Robert Minter, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

1. I worked as an investigator for the Charleston County Sheriff's Office. Upon my retirement, I began working as a private investigator. I have worked in that capacity for 29 years.
2. Norb Cummings and Marva Hardee-Thomas hired me to investigate the capital murder case for which Marion Bowman was charged and facing the death penalty.
3. I previously worked two other death penalty cases with Norb Cummings, and worked a number ofcases with him in family court. In my experience, Norb was not aggressive in his representation of clients. Norb did not like to try cases and would push his clients to plead guilty or otherwise settle their cases, even when they had strong cases that supported a finding of innocence or an issue they could win on in court.
4. It is my overall experience working as an investigator for Norb that Norb was very hands off and did not direct the work of the investigator, even to such an extent that he would not be dissatisfied if the investigator did not get their job done.
5. In Mr. Bowman's case, in particular, I know that Norb very strongly disliked the mitigation specialist hired to work on Marion Bowman's case, Dale Davis. Norb considered her too pushy and headstrong. She asked him for subpoenas for records and assistance with other tasks which were necessary in order for Ms. Davis to successfully

complete her task of developing mitigation for Mr. Bowman. These requests were reasonable and should have been met with action on the part of Norb but he refused and resented her for trying to do her job.

6. Mr. Bowman's other attorney, Marva Hardee-Thomas, was a lackluster attorney and I don't believe that she adequately represented Mr. Bowman.
7. I believe that if Mr. Bowman had different trial attorneys, then his case may have resulted in a different outcome.

Further affiant sayeth naught.

Robert L. Minter
ROBERT L. MINTER

Sworn to and subscribed before
me this 6th day of December, 2024.

Sherry C. Orr
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Sept 6, 2029

Exhibit 4

COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA

AFFIDAVIT OF ROBERT MINTER

Comes now ROBERT MINTER, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Robert Minter. I live in North Charleston, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein RM
2. I worked at the Charleston County Sheriff's Department from 1972 to 1995. After I left there I became a licensed private investigator. I was hired by attorney Norb Cummings as the fact investigator on Marion Bowman's case. It was the second death penalty case we worked on together. The first involved an armed robbery and the client was sentenced to death. Norb called me and asked me to work on Marion's case and I agreed. RM
3. Norb sent me about 1000 pages of discovery to review at the outset of my involvement. It looked like the discovery had been tossed up into the air and put back into a pile in no particular order – it was a jumbled up mess. It took me a few days to go through all of it and make sense of it. RM
4. I was never given any direction on the case from Norb or his co-counsel, Marva Hardee-Thomas. They never asked me to go interview witnesses or assigned me any specific investigative tasks. I operated more as a gopher on the case. Norb had me go with him when he talked to the psychiatrist and to meet with Marion's mom about a plea offer. I have no recollection of interviewing any fact witnesses from the discovery. If I did I would have typed up a summary and provided it to Norb. RM

5. I have no recollection of discussing the facts of the case with Marion. I never talked with him about people he wanted interviewed or issues he wanted investigated.

6. I believe that I provided my entire file to Marion's PCR lawyer.

Further affiant sayeth naught.

Robert L. Minter

Robert L. Minter

Sworn to me this 8th_day of
January, 2018.

Notary Public

My commission expires: 2-26-2023

Exhibit 5

W/D

Dear Honorable Judge Goodstein!

I marvin Bowman Jr am well aware of the offer Mr. Bailey has gave me. However, I'm so confused I don't what to do. Mr. Bailey is offering me a plea baign of life without the possibility of parole, but is still giving me information concerning this case. And the fact that is an substantial amount of discovery I do not have it is very difficult to understand what is going on. My Attorney is trying to convince me to accept this plea because he said and I quote "These white jurors whose skin is whiter than his is going to see a Black male verses a White female victim, are going to convict me because of my skin color, and not based upon evidence." This in mind that I would like to Request and evidential hearing as soon as possible in your presence. I am aware that you will be here in Dorchester county on the week of the 26th of Nov. and would like to speak with you. I have in my possession a letter from mrs Hardee-Thomas dated September 13, 2001 requesting interrogation policy and procedures of both DCSO and DCSO and she has not complied to my Request. I am not trying to act as if know alot about the law, but I would certainly like to understand the law that I have an attorney whose willing to fight this case ⇒

with their ability and knowlege of the law.

Exhibit 6

Dear Judge Goodstein: Nov. 5, 2001

I Marion Bowman JR am writing to ask you may I see you while you are here in Dorchester County. Reason for this meeting is that I'm scared for my life and I'm aware of the offer mr. Bailey has offered, which I refused to accept. I understand that mr. Bailey has all of his facts to try this case, so I would like to request a evidential hearing AS SOON AS Possible, because the police getting people to change or add things to their statements months later.

I am not trying to be wise or smart about this, but I do want to know what I'm trying to defend Myself Against. My Attorney has informed me the on Sept. 17, 2001 signed a EX Parte Order (authorizing Expert And Investigative services) in my case, in which my attorneys said have not started working because they have not received their checks. you ordered an urgency on October 18, 2001 when I was in front of you. I had some issues then that I wanted to bring to you attention, but was told it was not that type of conference.

I'm very concerned about my future, please find the time to spare to see me as soon as schedule will permit.

Thanks very Much

Marion Bowman JR

Exhibit 7

State of South Carolina
The Circuit Court of the First Judicial Circuit

DIANE SCHAFER GOODSTEIN
JUDGE

212 DEMING WAY, BOX 5
SUMMERVILLE, SOUTH CAROLINA 29483-4707
PHONE: (843) 832-0388
FAX: (843) 832-0389

November 14, 2001

Marion Bowman, Jr.
100 Sears Street
St. George, South Carolina 29477

Dear Mr. Bowman:

I am in receipt of your recent correspondence. Please be advised that this is considered ex parte communication. Judicial ethics do not allow a judge to have any form of communication with a party in an action outside of the proper setting (which is in the courtroom with all necessary parties present).

I can not consider anything unless it is on the record and the opposing party is present. If a hearing needs to be scheduled, the attorneys that have been appointed can arrange that for you. I am hereby forwarding this correspondence to your attorneys. Please direct any further communications to the attorneys that have been appointed to represent you.

Sincerely,

Diane Schafer Goodstein
Chief Administrative Judge
First Judicial Circuit

DSG:tkh

cc: Marva Hardee-Thomas, Esquire
Norbert Cummings, Esquire
Walter Bailey (w/o enclosure)

Exhibit 8

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

OFFICE OF EXECUTIVE
POLICY AND PROGRAMS

May 25, 2001

Mr. Marion Bomen
Dorchester County Detention Center
100 Sear Sreet
St. George, South Carolina 29477

Dear Mr. Bomen:

This is in receipt of your letter to Governor Jim Hodges concerning your judicial problem. While The Governor is sympathetic, this office does not and can not interfere with judicial matters. However, if you wish to lodge a formal complaint against your attorney I suggest you contact the following:

Commission on Lawyer Conduct
Office of Disciplinary Counsel
Post Office Box 11330
Columbia, South Carolina 29211

I am sorry we can not provide you with direct assistance in this matter but hope that the information provided will be useful to you.

Sincerely,

Andrew G. Dial

Andrew G. Dial

Office of Ombudsman
1205 Pendleton Street • Room 308 • Columbia, South Carolina 29201
Telephone: (803) 734-0457

South Carolina Bar

950 Taylor Street
PO Box 608
Columbia, SC 29202-0608
803-799-6653 Phone
803-799-4118 Fax
www.scbar.org

ADVANCING JUSTICE,
PROFESSIONALISM
AND UNDERSTANDING
OF THE LAW.

June 6, 2001

Mr. Marion Bowmen, Jr.
D.C.D.C.
100 Sears St.
St. George, SC 29477

Dear Mr. Bowmen:

I am in receipt of your letter. My job here is to mediate disputes between clients and their own attorneys.

Please know that the Public Defenders are appointed to many clients and are very busy. I will, however notify your Public Defender, Ms. Hardee-Thomas, of your concerns.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely yours,

Jill C. Rothstein
Counsel,
Client Assistance Program

cc: Ms. Hardee-Thomas

Exhibit 9

COUNTY OF ORANGEBURG

STATE OF SOUTH CAROLINA

AMENDED AFFIDAVIT OF JEFFREY YUNGMAN

Comes now JEFFREY YUNGMAN, sworn before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Jeffrey Yungman. I live in Mount Pleasant, South Carolina and I am over the age of eighteen. The information contained in the affidavit is within my personal knowledge and I am competent to testify to the matters herein. JY
2. In December 2018 I submitted an affidavit regarding the caliber of the work done by the attorneys who represent Marion Bowman. JY
3. I have recently reviewed my affidavit. I believe that in my affidavit I made it clear that the efforts of the attorney's representing Marion Bowman were well below the standards of attorneys in any of the other 29 death penalty cases I have been involved with. JY
4. It is also my belief that if the attorneys for the defendant in this case had performed at a same level of professionalism as other attorneys in similar cases, Marlon Bowman would not be facing the death penalty. JY

Further affiant sayeth naught.

Jeffrey Yungman (SC Bar # 76573)

Sworn to me this 25th day of November, 2024.

Helen R Dovell

Notary Public South Carolina

My commission expires: 11/20/25

Exhibit 10

COUNTY OF ORANGEBURG

STATE OF SOUTH CAROLINA

AFFIDAVIT OF JEFFREY YUNGMAN

Comes now JEFFREY YUNGMAN, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Jeffrey Yungman. I live in Mount Pleasant, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. JY
2. A funding order was signed for my services as a forensic social worker for Marion Bowman's trial on March 13, 2002 and the case proceeded to trial on May 3, 2002. JY
3. At the time I joined Mr. Bowman's defense team, Dale Davis, an experienced mitigation specialist, had been working on the team since July 2001. Ms. Davis and I communicated regularly about the case - interviews we conducted, records that were collected, and Marion's family dynamics. Unfortunately, we were unable to speak with trial counsel about our findings and seek direction for our investigation, despite numerous requests for meetings. In fact, I only recall all of us meeting together one time prior to the start of the trial, which was very unique in my experience with prior capital cases. In my prior experience on capital cases, there were numerous strategic planning meetings before trial to discuss what evidence was going to be presented and how. That never happened in Marion's case. JY
4. At one point, I was so concerned about the lack of communication and trial preparation by Marion's lawyers that I reached out to other attorneys I had worked with and it was obvious that Mr. Cummings and Ms. Hardee-Thomas were not taking the necessary steps

to adequately prepare for a death penalty trial. Most notably I had no idea what the lawyers' trial strategy was and there was zero preparation done for my testimony. From my experience in 30 death penalty cases, they neglected to do any of the routine tasks attorneys regularly performed throughout their representation of capital clients. There was simply no direction given and a serious lack of communication between the attorneys and the experts. JY

5. It was clear to me that they did not know what they should be asking us to do, but I cannot say if they did not known what they should be doing or knew and just were not doing it. It appeared that the information Ms. Davis and I were able to gather was not reviewed or followed up on in a timely fashion and was often entirely overlooked. JY

Further affiant sayeth naught.

Jeffrey Yungman

Sworn to me this 27th day of December, 2018.

Notary Public

My commission expires: 11-26-2023

Exhibit 11

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF Dorchester)

Richard Perez, who appeared personally before me, affirms and states the following:

1. I, Richard Perez, served as a juror during Marion Bowman's capital murder trial.

2. I am over the age of 18 years old and I have lived in Dorchester County since 1995.

3. I remember that I was not impressed by Mr. Bowman's attorneys and recall thinking that I would have wanted a different attorney if I were in Mr. Bowman's shoes. I don't recall that Mr. Bowman's attorneys presented any evidence on his behalf, therefore we had to rely solely on the case as presented by the prosecution.

4. Similarly, I do not recall hearing much of anything about Mr. Bowman's childhood or background. Thus, I had to rely completely on the prosecution's characterization of Mr. Bowman.

5. I believe that race played a role in this case, consciously or otherwise.

6. Although I was a strong proponent of the death penalty at the time of Mr. Bowman's trial, I no longer believe in the death penalty and would not sentence Mr. Bowman to death if I were on his jury today. At the time, I strongly believed in "an eye for an eye," but my religious views have since changed and the death penalty no longer seems appropriate.

7. I am in support of a conversion or commutation of Mr. Bowman's sentence to a life in prison sentence.

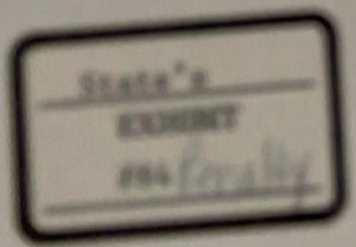
I affirm, under the penalty of perjury, that the foregoing is true and correct.

RICHARD PEREZ

Sworn to and subscribed before me
This 28 day of October, 2023

Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 12


STATE'S
EXHIBIT
#84

State's
EXHIBIT
#85 Penalty

Exhibit 13

3 arrested in burned body case

BY DELAWESE FULTON
Of The Post And Courier Staff

SUMMERVILLE-Three young men stood before a judge Tuesday charged in connection with the death of a woman whose burned body was found in the trunk of a torched car in the woods of northwestern Dorchester County.

Dorchester County Deputy Solicitor Robert Robbins urged the court to deny bail for all three men, and Magistrate Whitney Cunningham agreed.

James Tawain Gadson, 22, and Marion Bowman Jr., 20, both of Branchville, are charged with murder. Bowman also faces a third-degree arson charge.

Travis Dawit Felder, 19, also of Branchville, was charged with accessory to murder and third-degree arson, according to sheriff's office affidavits. He was arrested Monday.

Tears welled in the eyes of Felder's parents Tuesday as they watched their son, shackled and clothed in an orange prison uniform.

The victim was found in the trunk of a torched Ford Escort on Saturday morning in Reevesville. She had been shot twice sometime between 8 p.m. Friday and 3 a.m. Saturday.

The coroner's office has not yet released her name.

Felder's attorney, Clyde Dean of Orangeburg, argued in court that his client should be given bail.

"Travis doesn't have a record," he said.

Felder would be a low flight risk because "he lives with his parents," he added.

Bowman and Felder are accused of setting fire to the car and placing the woman, who had been shot in the head and back, in the trunk. The car was registered to Cordellia or Kandee Martin of Branchville, according to sheriff's office affidavits.

The victim was killed in the Reevesville area, said Lt. Jimmy Nettles. He said she and the men charged had "known each other for quite some time."

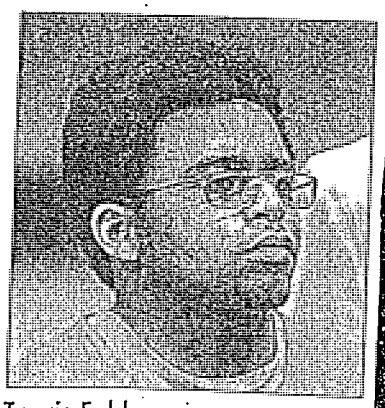
Sheriff Ray Nash called the slaying "a horrible case."

Nash credited teamwork put forth by the Orangeburg County Sheriff's Office, Branchville Police Department and State Law Enforcement Division with expediting arrests in the case.

Bowman and Gadson's families were not at the hearing.

James Gadson

Marion Bowman Jr.



Travis Felder

RULE 5
DISCOVERY

Exhibit 14

p. 36
p. 40

COUNTY OF ORANGEBURG

STATE OF SOUTH CAROLINA

AFFIDAVIT OF KENDRA BOWMAN

Comes now KENDRA BOWMAN, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Kendra Bowman. I live in Orangeburg, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. KB
2. I am Marion Bowman's sister. For as long as I can remember our parents did not get along. There are too many loud, violent fights to remember how any began or ended—it was a constant struggle for the two of them to be around each other. I remember my mom screaming out in pain, sobbing and crying after he would attack her. He would beat her so bad you really couldn't believe it. KB
3. After my mom finally left my dad we had absolutely nothing. We got an apartment with government help and DSS paid her money each month so we could survive. My mom worked on and off but she has rheumatoid arthritis so she was not able to do much most of my life. Marion and I had to clean, cook, and find work around the community to buy necessities like meat, shower soap, and bleach. KB
4. Growing up I did not have a strong relationship with my father because I did not ever get to spend time with him. He would often say he was coming to get us but every time we would get dressed and be waiting for him, excited, he would never show up. I remember one day he gave my brother enough money for a field trip but said mom would have to pay for mine. My brother just threw the money on the ground in front of him out of

frustration. I think we both realized that day we would never really have a dad in our lives so we would just have to take care of our family the best we could. KB

5. Because we did not have a strong relationship with our dad we also did not get to have any real relationship with his parents. He decided his "new family" with his second wife was his only family, so we did not have a close relationship with his parents or almost anyone else in his family KB
6. My mother had a few boyfriends over the years but the only one that ever lived with us was Joe Sims. He really treated us like his own kids and tried to make a difference in our lives. He did everything for us—we ate better, had help with our homework, he went to talk to our teachers, he made sure we had stuff for school, everything. He was like a savior to us; he helped get us where we are today. Without him we would have never left Orangeburg or St. George. I wish he would have stayed in our family but we have always stayed in touch and I still call him Dad. KB
7. I remember it was really hard for my brother growing up. Everyone seemed to pick on him and bully him. They called him "tar baby" and other terrible names because his skin is so dark, darker than everyone else's and he has what they call a high booty. Everyone picked on him so much and called him "Black" that he just accepted it and started calling himself Black instead of "Jr" like our family always had. KB
8. My brother really tried to do everything he could for our family. He often attended my basketball games and went to watch me cheerlead at other sporting events like I really wanted my dad do. KB
9. I was closer to my brother than anyone else. We even got an apartment together when we moved out of my mom's house. Although we were still really poor, living in housing authority apartments, we were always really close. My brother was really easy to talk to

and I always loved to be around him. I remember him giving me piggy back-rides to the store down the road when I was hungry but too lazy to walk that far. He would do everything he could to make our lives a little better, a little more normal. KB

10. I grew up with Kandee Martin and we were friends. She would even spend the night sometimes and we were so close she would sleep in my bed. She called me her black sister—Kandee did not see race, there were not two different sets of people. We were all the same in her eyes, but that is not how everyone else, especially her parents, saw it. Kandee started using drugs as a teenager and she seemed to enjoy that kind of life. She dated a few different black guys and was always around the neighborhood—she knew just about every body. I know no one at his trial understood her relationship with everyone that was involved and it would have made everything much more clear. KB
11. Everyone also knows that Hiram was sleeping with my brother's wife and he wanted to make sure my brother was taken out of the picture. They even had a paternity test done on one of her kids to see if it was his. Hiram was the only person that said he knew anything about the gun that was found in my sister-in-law's couch and that was after the police had searched it over and over with metal detectors. Hiram would do anything he had to get what he wanted. He had been running the streets with guns for years at that point and had always done whatever it took to take care of himself. KB
12. The story of who had the gun and when has gotten really mixed up. I never had the gun until my dad called and told us to go get it. I have no idea where he got it from or why he had it. It was really hard to deal with everything going on with my brother at the time and having charges pinned on me too. It made it seem like the people were trying to just get rid of our whole family. KB

13. I did not testify at my brother's trial but I would have if I had been asked. Everyone was putting us under a lot of pressure about the charges we had. I really wish my brother's lawyers had asked me to talk about him to the jury. KB

Further affiant sayeth naught.

Kendra Bowman

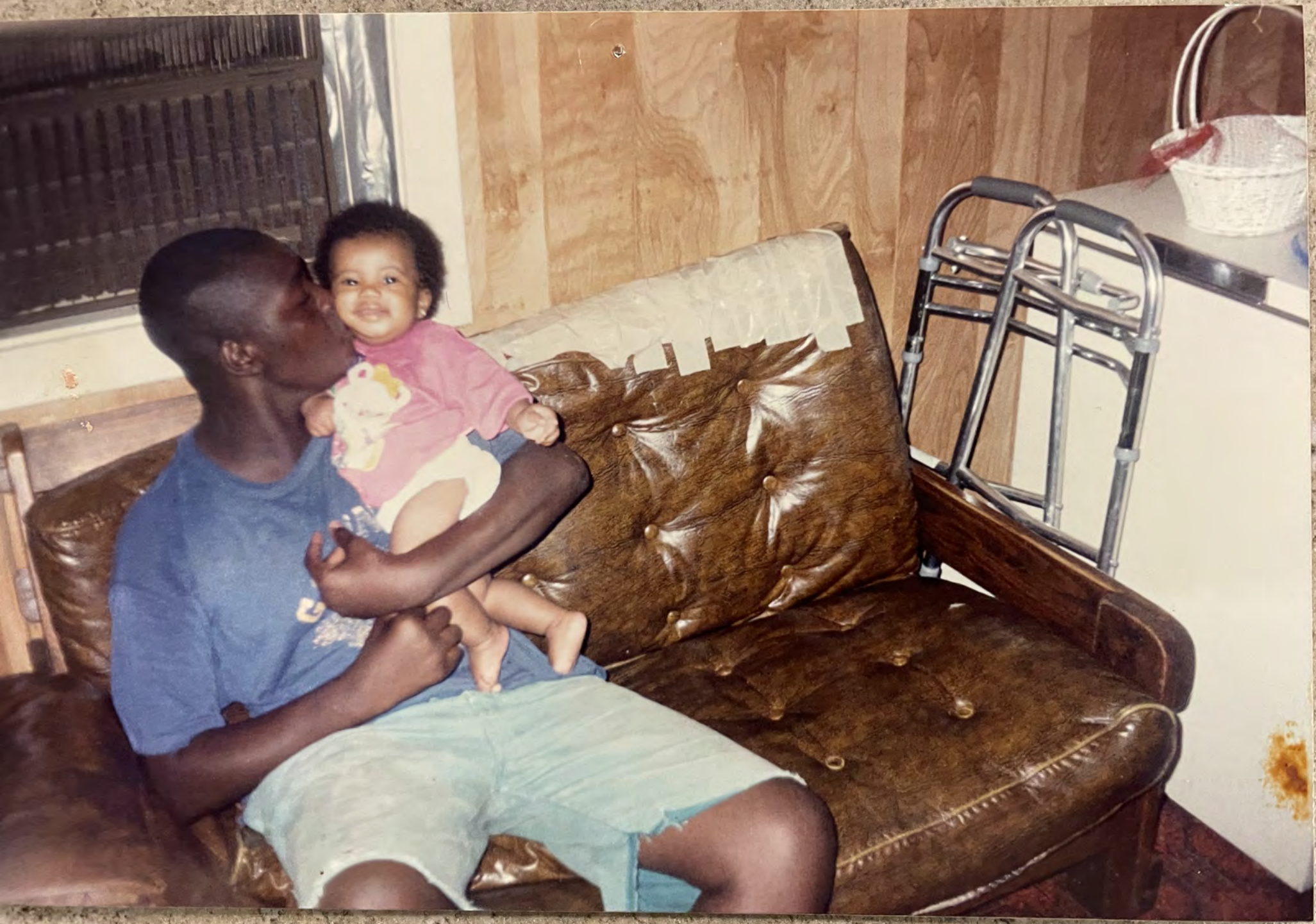
Kendra Bowman

Sworn to me this 28th day of December, 2018.

Notary Public South Carolina

My commission expires: 3/24/27

Exhibit 15



Black
+
Naquasha

<No.14A>009 23-08 N1NNN+00AU 004

Defendants
EXHIBIT
#12

Exhibit 16

COUNTY OF BEAUFORT)
)
STATE OF SOUTH CAROLINA)

AFFIDAVIT OF JAMES ARTHUR BROWN, JR.

I, James Arthur Brown, Jr., being duly sworn, do state:

1. I am a currently a resident of Beaufort County, South Carolina.

2. I am at least eighteen years of age.

3. I currently work as an attorney in Beaufort, South Carolina where I have lived since 1998. I have operated my own private practice in Beaufort since 2001. I have served on the board of the South Carolina Association of Criminal Defense Lawyers for more than 20 years and served as president of this organization in 2007. I have served on the CJA for the United States Court of Appeals since 2002. I have been counsel in five death penalty matters and handled criminal cases for more than 3000 clients since being licensed in 1996.

4 I have been married for 30 years and have three grown sons. One son just passed the bar in South Carolina, another son is in his second year of law school and my third son is an Emmy award winner working for Extra TV and True Crime TV in Los Angeles. My wife is a retired school teacher.

5. I am writing to ask for you to spare the life of my friend, Marion Bowman.

6. I was originally appointed as the lead attorney for Mr. Bowman's PCR case in 2007. Since that time, I have litigated his case and closed out my file more than a decade ago. He and I are close in age so we have grown through many of life's experiences together including parenting a child and losing a parent.

HIS CONTINUED EMOTIONAL VALUE TO OTHERS

7. Marion loves his daughter and now his granddaughter. Over nearly twenty years, his daughter has always been the first thing he talks about.

8. His eyes light up when he talks about their birthday and Christmas time visits together. I remember when she got her first bicycle. I remember how happy he was that he could give her a shirt for Christmas bought by others on his behalf.

9. I remember as she grew up and Marion's shame that his relationship with her was one with a plastic barrier between their humanity.

10. Marion cherishes that relationship nonetheless. Instead of despair, Marion advised his daughter to better herself and she followed this advice and moved to a better city and obtained a gainful job following that advice.

11. I remember when Marion's grandchild was born. I remember the smile on his face when he told me and my wife about the chance to see her.

12. These moments show the emotional value Marion provides by just being alive. As a fellow Christian, there is no greater trait that a human can possess than love.

13. Letting him live fosters the love of our fellow man in us. Killing him only harvests wind.

ONE OF HIS TRIAL ATTORNEYS WAS AN ABJECT RACIST

14. You should spare Marion's life because of the problems with his attorneys.

15. His lead attorney's words and actions demonstrated his uncontradicted racism. His racist remarks were made spontaneously under oath during his testimony about his work for Marion.

16. During his testimony at a PCR hearing, Marion's trial attorney interrupted the questions and answers and turned directly to Marion at the petitioner's table.

17. The trial attorney asked Marion *why a black man would be alone on a road with a white girl.* He asked what good could come out of an interracial relationship.

18. Blind to the normal, positive reasons an African American and a Caucasian American would have a relationship, the trial attorney perpetuated the trope that black men are a danger to white women.

19. Everyone in the courtroom, including the judge, was shocked that Marion's trial lawyer made such a racist remark. The courtroom went silent and there was a long pause before questioning resumed.

20. If I recall correctly, the PCR judge even tried to explore this statement to make sure he understood the racism behind it correctly.

21. But the context of this outburst is also important. The trial lawyer made these statements when being asked why he did not tell the jury about the true relationship between Marion and the deceased.

22. If the trial lawyer had not been racist he would have presented evidence of this biracial relationship and the jury would have known that Marion and the deceased grew up together and attended school together from elementary school until adulthood.

23. If the trial lawyer had not been racist, he would have presented evidence that Marion was younger than the deceased. He would not have portrayed Marion as an adult and the deceased as a child.

24. If the trial lawyer had not been racist, he would have presented evidence that Marion worked alongside the deceased's father and brother as laborers in the construction industry.

25. If the trial lawyer had not been racist, he would have told the jury of Marion's abusive dad who beat his mom with brass knuckles.

26. If the trial lawyer had not been racist, he would have told the jury of Marion's relationship with his then young daughter and how he had the capacity to develop a loving relationship with her.

27. Instead, Marion's trial lawyer fostered the unspoken theme of the prosecution - that Marion deserved the death penalty because he had a sexual relationship with a white woman and that black men prey on white women.

28. You should spare Marion's life because he was represented by a racist attorney during a death penalty trial involving the killing of a white woman by a black man. It is impossible to view this in the context of South Carolina's complicated history on race and not believe this racism infected the trial and resulting sentence of death.

29. I know about this racism through my work and I also know about this racism through my own life experiences. My father marched in the civil rights marches in the 1960's and his mother stood down the Klan in south Florence County in the 1950's. But just one generation before that, my direct ancestor wore a green robe of terror. Two hundred years before that, my family on both sides owned slaves - the largest symbol of suffering inflicted by one citizen against another in our nation's history.

30. South Carolina has grown up and past those hateful ways. Sparing Marion's life will show this growth and how we are a better state. Your grant of clemency will be proof we are not still a state full of hate.

ONE ATTORNEY WAS INCOMPETENT AND WITHHELD EVIDENCE

31. As required by state law, Marion was also represented by a second attorney at his trial. This attorney was incompetent and under investigation by the Office of Disciplinary Counsel at the time of the trial of Marion's case. It was never clearly divulged what she was being investigated for but I believe she suffered some type of suspension as a result of her conduct.

32. But the most troubling aspect of her representation of Marion is that she also represented another client who gave the prosecutor a statement questioning the extent of Marion's involvement in the killing. This information was hidden from Marion by his own lawyer and the prosecutor. The jury never heard this information.

33. This lawyer was so incompetent that she did not even ask the trial judge for guidance or a ruling about this conflict. Her efforts to conceal the statement of her other client puts her clearly on the side of the prosecution. She did not serve as any safeguard to the racism of Marion's lead attorney.

34. You should commute Marion's sentence because of this incompetent attorney.

THE PROSECUTOR WITHHELD EVIDENCE

35. You should commute Marion's sentence because of misconduct and false testimony occurring during Marion's trial. At least three witnesses committed perjury during Marion's trial or provided false statements during negotiations with the prosecutors. The prosecutor admitted he did not disclose evidence about these witnesses' lies.

36. Three persons were charged as co-defendants in Marion Bowman's case. One of these persons was his first cousin. All three of these people provided false testimony during the trial or during negotiations with prosecutors.

37. Specifically, Mr. Travis Felder repeatedly lied to the prosecutor during his efforts to negotiate his own freedom. He later admitted his trial testimony was also untruthful. However, the prosecutor hid the lies which occurred during the negotiations with Felder. The prosecutor also failed to correct the false testimony during the trial. Marion's lawyers failed to uncover the truth because there was no investigation into the statements made by Mr. Felder.

38. Likewise, Hiram Johnson lied during the trial. His deals he cut with the prosecution were not provided to the defense. The jury never heard that Mr. Johnson lied at every point in Marion's case.

39. But the biggest concealed evidence was evidence that Taiwan Gadson was the killer and not Marion or that Taiwan was at least equally culpable in the killing. Two different statements were made documenting Mr. Gadson's jailhouse confessions but the prosecutor hid this information from the court and the jury never heard about this. The concealment of one of these confessions occurred with the complicity of one of Marion's trial attorneys.

40. You should spare Marion's life for this reason.

HIS POST-CONVICTION TRIAL WAS RUSHED TO ACCOMMODATE THE ASCENSION OF A JUDGE TO AN APPELLATE COURT

41. Unlike most post conviction challenges, the PCR in this case involved testimony generated at many depositions and court hearings which spanned several weeks. However, the last week of testimony was truncated because of the Christmas and New Years holidays and because the PCR judge was ascending to the appellate bench at the

end of the year.

42. I know that I am human and I surely overlooked something I should have done for Marion. This last minute development in a multi-year PCR could not have inured toward's Marion's benefit.

NOT THE WORST OF THE WORST

43. You should spare Marion's life because this case is not the worst of the worst. All murders are bad but not all murders are punished by the loss of life. This penalty is reserved for the worst of the worst. While serious, the aggravating circumstance in this case was that Marion lied to the deceased to encourage her to drive to a secluded area.

44. But for this lie, this would not even be a death penalty case. In most jurisdictions, lying would not be an aggravating circumstance. While the decision to define kidnaping this broadly is left to the legislature, the power to commute a sentence allows you to serve as a check and balance in the appropriate situation.

45. This is the type of case where you should spare Marion's life because lying to the deceased does not make this case the worst of the worst.

FORGIVENESS IS THE CHRISTIAN THING TO DO

46. Finally, you should spare Marion's life because he is not the man he was at the time of this crime. We have been taught the lesson of the imperfect vessel. The power to break what was not infirm and build it back.

47. Marion's mistakes in the past do not define who is today. His incarceration exacts penalty and punishment but killing him as he lives today would serve no purpose to anyone. Instead it would demonstrate hate towards fellow man. As we have been taught, Christ's last act on Earth was not to condemn the unrepentant but instead to show mercy on the forgiven.

48. I make this statement of my own free will and accord, absent any coercion or duress.

_____ 12/16, 2024
James Arthur Brown, Jr.

On the 16th day of Dec, 2024, James Arthur Brown, Jr. appeared before me and being duly sworn executed the foregoing Affidavit.

Jessica Roper
Notary Public for the State of South Carolina
My Commission Expires: 01/08/2034

JESSICA ROPER
Notary Public-State of South Carolina
My Commission Expires
January 08, 2034

Exhibit 17

The Supreme Court of South Carolina

The State, Respondent,

v.

Freddie Eugene Owens, Appellant.

Appellate Case No. 2024-001397

ORDER

Freddie Eugene Owens seeks a stay of his September 20, 2024 execution to pursue post-conviction relief (PCR). Owens filed a third PCR application on August 30, 2024, alleging he discovered evidence on August 21 and August 22, 2024, which entitles him to a hearing and would invalidate his conviction and death sentence. He has also filed a petition for a writ of habeas corpus in this Court's original jurisdiction and seeks a stay pending this Court's resolution of that petition.

Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996), a motion for a stay of execution pending the filing of a successive PCR action or a petition for a writ of habeas corpus must demonstrate exceptional circumstances warranting the issuance of the stay. Because Owens has not shown exceptional circumstances, we deny the motions to stay the execution.

Stay Pending Successive PCR

We agree with Owens that the facts in his PCR application must be accepted as true and must be viewed in the light most favorable to Owens. *See Robertson v. State*, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016). Further, when a PCR applicant alleges facts that would establish an exception to the statute of limitations or the prohibition against successive PCR applications, and those facts are not conclusively refuted, the applicant is entitled to a hearing. *Id.* We are not, therefore, required to decide whether the newly discovered evidence would entitle Owens to a new trial. Instead, we must only determine whether Owens has presented "exceptional circumstances" to warrant a stay of execution to pursue the PCR action. *See In re Stays of Execution in Cap. Cases*, 321 S.C. at 548, 471

S.E.2d at 142.

Golden Affidavit

The first piece of evidence presented as support for Owens' request for a stay of execution is an affidavit executed by one of Owens' co-defendants, Steven Andra Golden, on August 22, 2024 (the 2024 Affidavit). At Owens' trial, Golden testified it was Owens who shot the victim. He further testified he had received no promises as to his sentence in exchange for his testimony except for those set forth in his signed plea agreement. Golden's signed plea agreement was provided to Owens and introduced into evidence at trial. The signed plea agreement provided the Solicitor advised Golden and his counsel that he "will consider a recommendation of leniency" if Golden testified in accordance with his prior written statement. (Emphasis in original). The plea agreement further provided Golden faced sentences of death, life without parole (LWOP), or a minimum term of imprisonment for thirty years, and it was in the Solicitor's sole discretion to recommend leniency upon an evaluation of Golden's testimony.

In the 2024 Affidavit, Golden states his attorneys advised him the Solicitor had offered him a deal promising to drop the death penalty and LWOP if he testified consistent with his prior written statement. The 2024 Affidavit further states the prosecutor who questioned Golden about the plea agreement advised him to testify that he knew he could be sentenced to death and no guarantees had been made as to his sentence; however, Golden claims he knew he would not be sentenced to death or LWOP if he testified his prior statement was true. Owens asserts the 2024 Affidavit is evidence the State committed a *Brady*[1] violation by failing to disclose the alleged promise not to pursue the death penalty or an LWOP sentence because the promise could have been used to impeach Golden's testimony against Owens.

At trial, Owens' counsel filed a *Brady* motion seeking an unsigned affidavit prepared by one of Golden's trial counsel, Richard W. Vieth (the 1999 Draft Affidavit). At the hearing, Vieth informed the trial court he prepared the 1999 Draft Affidavit to memorialize the fact that Golden was advised of the evidence that would be presented against him and declined the plea offer in which the Solicitor offered "no guarantees except that[,] as the plea agreement indicated[,] if he cooperated, testified truthfully[,] that the Solicitor would consider leniency." According to Vieth, "if the Solicitor were ever inclined to go below life in prison

[1] *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding the suppression by the State of evidence favorable to the accused upon request violates due process if the evidence is material either to guilt or punishment).

without parole[, it] would be purely in the Solicitor's discretion, never any overtures to the contrary." The Solicitor also represented to the trial court that the only agreement was the signed plea agreement introduced at trial.

Although the 1999 Draft Affidavit was prepared by Vieth for Golden to sign, Golden did not sign it. According to the 1999 Draft Affidavit, Golden was told by his lawyers that he had been offered a deal in which "the solicitor *will*" withdraw the death penalty and LWOP and "*would* agree to recommend a sentence less than the mandatory sentence for capital cases" if Golden testified in accordance with his statement. (Emphasis added). The 1999 Draft Affidavit further provides Golden was aware he "*will* receive a sentence that will allow [him] to be parole eligible" if he testified truthfully in accordance with his prior statement, but he chose not to cooperate with the State. (Emphasis added).

Owens was aware of the 1999 Draft Affidavit at the time of his trial and asked the trial court to require the State to produce it under *Brady*. The trial court conducted a hearing on the request and reviewed the 1999 Draft affidavit *in camera*. The trial court determined the 1999 Draft Affidavit was a privileged communication between Golden and his counsel and Golden had not waived the privilege. The court further found it "could not serve any benefit, would[,] therefore[,] not be prejudicial to [Owens]" and stated it was not sure it could be used as impeachment because it was not "adopted by [Golden.]" Therefore, the court denied Owens' *Brady* motion. The 1999 Draft Affidavit was marked as Court's Exhibit 4. Owens did not appeal the trial court's ruling.

To begin analyzing Owens' request for a stay of execution based on an alleged secret plea agreement with Golden, we consider the substance of the evidence in the 2024 Affidavit and the 1999 Draft Affidavit, which Owens claims corroborates the 2024 Affidavit. According to Owens, both affidavits show Golden was promised he would not face the death penalty or an LWOP sentence if he testified consistently with his prior written statement.

We do not accept Owens' interpretation of the 1999 Draft Affidavit. Vieth, who prepared the 1999 Draft Affidavit for Golden to sign, stated unequivocally to the trial court during the *Brady* hearing that the document "had nothing to do with negotiations with the Solicitor's office whatsoever. Absolutely none." Rather, Vieth explained the document "was produced by me to try to convince a client to do what I thought was in his best interest and that is all that document is. Anything trying to intimate it means anything else would be totally erroneous." Vieth reiterated to the trial court "that there had been negotiations with the Solicitor's office that offered no guarantees except that as the plea agreement indicated if he

cooperated, testified truthfully[,] that the Solicitor would consider leniency in this case." The 1999 Draft Affidavit was—as Vieth explained to the trial court—a document designed as

> . . . a cover our rear-end type letter that might be used or might not be used two or three years down the road if he ever was convicted of this crime and was sentenced to death and told any tribunal that we did not advise him of the evidence that could be used against him. So I wanted him to understand what I thought was potential evidence that could be used against him in this trial, understanding that there had been negotiations with the Solicitor's office . . . .

Thus, the 1999 Draft Affidavit was not prepared to represent the plea negotiations between the Solicitor and Golden's attorneys but, rather, was evidence of what *Vieth* told Golden to advise him of the evidence against him and try to induce him to accept the signed plea agreement. This understanding is supported by Golden's statement in paragraph 4 of his 2024 Affidavit: "During jury selection, *my lawyers told me* the prosecutors offered me a deal. *They* said that if I testified that what I said about [Owens] in my written statement was true, the prosecutors would drop the death penalty and the possibility of life without parole." (Emphasis added). Similarly, Golden's 2024 Affidavit does not indicate *the Solicitor* made him a promise of leniency. Rather, like the 1999 Draft Affidavit, Golden's statements in the 2024 Affidavit are clearly based on what he was told by his lawyers in 1999. Therefore, the allegation that *the Solicitor* promised Golden sentencing leniency is not supported by either affidavit.

However, even if we accept Owens' interpretation of the two affidavits that they show the State failed to disclose a promise made to Golden by the State not to seek the death penalty or an LWOP sentence, we deny the motion for a stay because Owens knew of the 1999 Draft Affidavit and Golden's admission that he was testifying to avoid the death penalty during his trial in February 1999. Therefore, his claim of a secret plea agreement cannot constitute material evidence discovered within one year of the date of Owens' filing of his latest PCR application. First, Golden openly conceded in his testimony at Owens' trial that he was testifying to avoid the death penalty. In addition, by exercising reasonable diligence, Owens could have obtained the 1999 Draft Affidavit and appealed the trial court's ruling on his *Brady* motion or otherwise discovered it during his first PCR action filed in 2009. In fact, it appears Owens contemplated raising the issue in his 2009 PCR action because his PCR counsel interviewed Golden prior to the PCR hearing to determine whether he had been offered anything other than what appeared in the

plea agreement introduced at trial. Although Golden denied any other deal at that time, nothing prevented Owens from obtaining the 1999 Draft Affidavit or interviewing Golden's attorneys and/or the Solicitor about the plea agreement. Therefore, evidence of the alleged secret plea agreement was available to Owens long ago, and the PCR application is not timely. *See* S.C. Code Ann. § 17-27-45(C) (2014) (providing a PCR application must be filed within one year of the actual discovery of material facts, or within one year of the date the facts could have been discovered by the exercise of reasonable diligence, that require the vacation of the conviction or sentence).

Because he has not met his burden of showing he could not have discovered the alleged secret plea deal by the time of his 2009 PCR, Owens cannot show he is entitled to file a successive PCR application based on the alleged deal. *See Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (holding as long as it was possible to raise an argument in a prior PCR application, an applicant may not raise it in a successive application, and the applicant has the burden of proving that the grounds could not have been raised in a prior PCR application).[2]

Juror Affidavit

The second piece of evidence Owens sets forth in support of his motion to stay his execution is an affidavit by a juror at Owens' trial. The affidavit states the juror noticed Owens was wearing a device on his back because it created an obvious bulge under his clothing. She stated, "[a]t the time[, she] thought it was some kind of stun device."

Initially, we question whether the juror's affidavit would be admissible at a PCR hearing. Rule 606(b), SCRE, provides:

> [A] juror may not testify as to any matter or statement occurring

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[2] In a footnote, Owens argues the State also had a secret plea deal with Nakeo Vance, another co-defendant who testified against Owens. He supports this argument with the 2024 Affidavit alleging a secret plea deal with Golden and Vance's bail form (set one week after Owens' sentence), guilty pleas to accessory to murder and armed robbery (taken two weeks later), and negotiated sentence of ten years, suspended on fourteen months of time served and five years of probation. This is not evidence of a secret plea deal with Vance, much less newly discovered evidence that would warrant a successive PCR application or application of the discovery rule of the statute of limitations. *See* S.C. Code Ann. § 17-27-45(C); *Aice*, 305 S.C. at 451, 409 S.E.2d at 394.

> during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, *except* that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

(Emphasis added).

It is unclear whether the juror's observation of the bulge under Owens' clothing is "extraneous prejudicial information" under the Rule. *See, e.g., United States v. Gambina*, 564 F.2d 22, 24 (8th Cir. 1977) (holding the defendant could not examine the jurors as to whether "security measures" used in court influenced their verdict because the security measures were not "extraneous matters" under Rule 606(b), FRE). *But see United States v. Simpson*, 950 F.2d 1519, 1521 (10th Cir. 1991) (holding the accidental viewing by jurors of a co-defendant in handcuffs was "extraneous information" under Rule 606(b), FRE).

We further question whether the juror's observation of what she believed to be a stun device was "improperly brought to the [juror's] attention" or would constitute an "outside influence [that] was improperly brought to bear upon [the] juror" as required by Rule 606(b). Outside influence is where jurors receive information from some outside source. *State v. Galbreath*, 359 S.C. 398, 405, 597 S.E.2d 845, 848–49 (Ct. App. 2004). The juror's affidavit does nothing more than recite what she observed in the courtroom and her speculation that it was some sort of stun device. Trial counsel had ample opportunity to address Owens' appearance while wearing the stun belt, and there is no indication that counsel observed anything they found concerning. Thus, there was nothing "improper" about the juror observing Owens' appearance in the courtroom.

Even if the affidavit is admissible, however, in his first PCR application, Owens raised an allegation that his 2006 resentencing counsel were ineffective in failing to ensure the jurors did not see him in restraints and his death sentence was unconstitutional because jurors saw him in restraints. In preparing for the PCR hearing, Owens' PCR counsel questioned jurors about whether they saw Owens in restraints. Although Owens filed a motion for summary judgment on these allegations, attaching affidavits from two jurors who stated they noticed Owens in

shackles, he waived the allegations at the beginning of the PCR hearing.

Although the juror who provided the affidavit was on the panel at Owens' original trial, Owens' trial counsel were aware he was wearing the stun belt, and his PCR counsel were clearly concerned about jurors seeing his restraints. There is no reason PCR counsel could not have questioned the jurors from the original trial about Owens' restraints at that proceeding. Owens has failed to show he could not have discovered, through the exercise of reasonable diligence, that jurors saw the stun belt at his original trial and raised it in his first PCR application. As such, this claim is also barred by the statute of limitations and impermissibly successive. *See* S.C. Code Ann. § 17-27-45; *Aice*, 305 S.C. at 451, 409 S.E.2d at 394.

Petition for a Writ of Habeas Corpus

Habeas corpus relief is available to prisoners in South Carolina in this Court's original jurisdiction. *See* S.C. Const. art. I, § 18. Writs of habeas corpus are seldom used—only when necessary to ensure fundamental constitutional rights—and the applicant bears a much higher burden in a habeas corpus proceeding. *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008). Therefore, a writ of habeas corpus will issue "only under circumstances where there has been a 'violation, which, *in the setting*, constitutes a denial of fundamental fairness shocking to the universal sense of justice.'" *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting *State v. Miller*, 84 A.2d 459 (N.J. Super. 1951))); *see also Moore v. Stirling*, 436 S.C. 207, 218–19, 871 S.E.2d 423, 429 (2022) ("Two components are needed to meet the standard articulated in *Butler* and other cases. The petitioner must prove (1) the existence of a constitutional violation; and (2) the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice."); *McWee v. State*, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (stating a writ of habeas corpus will be granted only under "unique and compelling circumstances"). This Court has noted that "[a]t some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice." *Williams*, 380 S.C. at 480, 671 S.E.2d at 603. This is the lens through which we must view Owens' allegations.

Owens contends he is entitled to a writ of habeas corpus based on the trial court's charge on implied malice from the commission of a felony and the disproportionality of his sentence.

Implied Malice Charge

The trial court initially charged the jury on implied malice as follows:

> If one intentionally kills another during the commission of a felony an implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you along with other evidence in the case. And you may give it such weight as you, the jury, determine it should receive.

When later instructing the jury on accomplice liability, the trial judge stated:

> If persons kill another in doing or attempting to doing [sic] an act amounting to a felony, the killing is murder and if a culpable homicide results from the pursuant common purpose or the conspiracy, all are alike criminally responsible. This is commonly described as the hand of one is the hand of all.

In *Lowry v. State*, 376 S.C. 499, 506, 657 S.E.2d 760, 764 (2008), the Court held an instruction like the second one given in this case, unconstitutionally shifted the burden of proof for malice from the State to the defense. However, as in this Court's recent decision in *State v. Brown*, ___ S.C. ___, 904 S.E.2d 448 (2024), the charge here did not contribute to the verdict and was harmless beyond a reasonable doubt because Owens denied participating in the crimes. "Significantly, at no point did Petitioner dispute that the armed robbery and murder of the victim occurred or that the victim's death was the result of malice." *Id.* at __, 904 S.E.2d at 450. Therefore, the erroneous instruction is not "shocking to the universal sense of justice."

Further, Owens could have raised an allegation of error in the instruction based on our 2008 *Lowry* decision in his 2009 PCR application and has presented no reason for not raising the issue then. *See* S.C. Code Ann. § 17-27-45(B) (Supp. 2014) ("When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later

than one year after the date on which the standard or right was determined to exist.").

Proportionality

Owens contends his death sentence is inherently disproportionate for a defendant who did not kill; intend to kill; or, while acting as a major participant in a felony, display reckless indifference to human life. He further contends he is entitled to a second[3] proportionality review under the standard set forth in *Moore*, 436 S.C. 207, 871 S.E.2d 423.

As to Owens' allegation that his death sentence is disproportionate because there was no specific finding by the jury that he was the triggerman, a death sentence may be disproportionate to the degree of moral culpability where the defendant merely "aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed." *Enmund v. Florida,* 458 U.S. 782, 797 (1982). However, in *Tison v. Arizona*, 481 U.S. 137, 157–58 (1987), the United States Supreme Court clarified that:

> *Enmund* held that when "intent to kill" results in its logical though not inevitable consequence—the taking of human life—the Eighth Amendment permits the State to exact the death penalty after a careful weighing of the aggravating and mitigating circumstances. Similarly, we hold that the reckless disregard for human life implicit in *knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state*, a mental state that may be taken into account in making a capital sentencing judgment when that conduct causes its natural, though also not inevitable, lethal result.

(Emphasis added). Therefore, "major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement." *Id.* at 158.

Our first point in rejecting Owens' belated claim of disproportionality is that his assertion that he was somehow not a major participant in the murder is—to say the

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[3] This Court first conducted a proportionality review of Owens' death sentence in 2008, concluding his "sentence was neither excessive nor disproportionate." *State v. Owens*, 378 S.C. 636, 641, 664 S.E.2d 80, 82 (2008).

least—absurd. Owens' interpretation of the facts of this case has been squarely refuted by, as the Fourth Circuit Court of Appeals stated, "the long chain of events giving rise to this capital habeas action, which encompass a criminal trial, three sentencing trials, three rounds of direct appeal, and two rounds of state postconviction proceedings, in addition to the proceedings in the district court." *Owens v. Stirling*, 967 F.3d 396, 403 (4th Cir. 2020). Summarizing the actual facts of the case in its review of that "long chain" of proceedings, the Fourth Circuit described Owens' participation in the brutal murder for which he was convicted and has now been sentenced to death in three separate trials. 967 F.3d at 403–04.

The evidence at the third sentencing proceeding—including a video showing the man in the ski mask shot the clerk; testimony that Owens was wearing a ski mask, while Golden was wearing a stocking mask; and testimony that Owens admitted being the shooter—showed conclusively Owens was the person who shot the clerk. However, even if the jury determined Owens was the man in the stocking mask, he was a major participant in the murder and armed robbery who showed a reckless disregard for human life by knowingly engaging in criminal activity that carries a grave risk of death.

Owens' claim that he is entitled to a proportionality review that includes cases in which the defendant was not sentenced to death is also without merit. In *Moore*, 436 S.C. at 230, 871 S.E.2d at 435, this Court held it is not required to limit the similar cases for proportionality review to only those cases in which the death penalty was imposed. However, there is no language in *Moore* suggesting a constitutional proportionality review *requires* the consideration of cases in which the death penalty was not imposed. Further, *Moore* did not set forth a retroactive rule requiring a new proportionality review that includes cases in which the death penalty was not imposed. Instead, *Moore* merely clarified the application of section 16-3-25(C)(3) of the South Carolina Code (2015). *See Moore*, 436 S.C. at 230, 871 S.E.2d at 435 ("[A]s a point of law, we clarify our holding in [*State v. Copeland*, 278 S.C. 572, 300 S.E.2d 63 (1982),] and hold this Court is not statutorily required to limit the pool of 'similar cases' for comparative proportionality review to only those cases in which the death penalty was imposed.").

Comparative proportionality review is an essential task for this Court to ensure the jury's decision was not the result of arbitrariness. *Moore*, 436 S.C. at 222–23, 871 S.E.2d at 431. Looking at the aggravating circumstances present in other cases is an obvious point for comparison when analyzing whether a defendant's capital sentence is the result of a jury's arbitrariness or is disproportionate to the sentences

of other offenders. *Id.* at 225, 871 S.E.2d at 433.

However, proportionality is not limited to whether the facts of the murder are similar. Instead, the jury considers both aggravating and mitigating circumstances in determining whether a murder defendant should receive a death sentence. *See Enmund*, 458 U.S. at 798 (emphasizing the focus must be on the defendant's culpability because "we insist on 'individualized consideration as a constitutional requirement in imposing the death sentence,' . . . which means that we must focus on 'relevant facets of the character and record of the individual offender'" (first quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978); and then quoting *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976))); *State v. Passaro*, 350 S.C. 499, 510, 567 S.E.2d 862, 868 (2002) (noting the Court considered evidence of Passaro's individual characteristics that he suffered slight mental or emotional disturbance at the time of the murder and did not have a substantial history of violent criminal conduct).

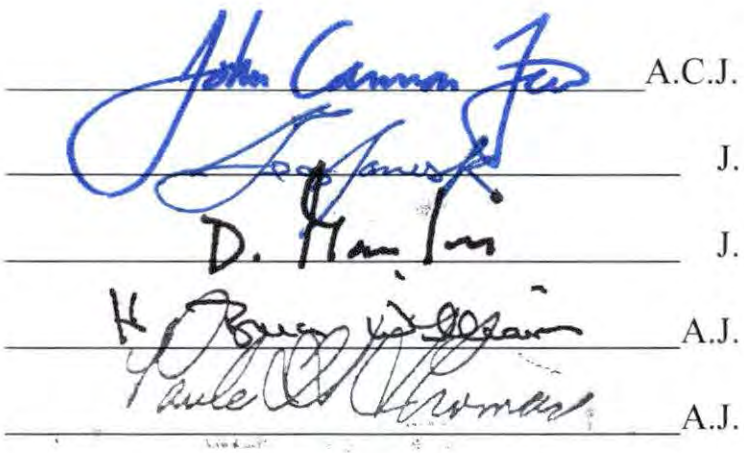
In the third sentencing proceeding, the State presented numerous facts in addition to those of the underlying murder itself to prove Owens deserved a sentence of death. In addition to evidence he committed a string of armed robberies on the same night as the robbery in which he murdered the victim, this Court summarized the many disciplinary infractions Owens committed while in jail awaiting trial. *Owens*, 378 S.C. at 639–40, 664 S.E.2d at 81–82. Most importantly, however, the State presented Owens' February 16, 1999 statement in which he admitted he brutally murdered his cellmate during the twenty-four-hour waiting period between his 1999 criminal conviction and his first sentencing trial. *See State v. Owens*, 346 S.C. 637, 653–66, 552 S.E.2d 745, 753–60 (2001) (discussing at length the admissibility of Owens' statement that he brutally murdered his cellmate); *see also Owens*, 967 F.3d at 406 ("Among other things, evidence of [Owens' future dangerousness] included testimony about Owens'[] killing of his fellow inmate on the eve of his first sentencing trial—the 'elephant in the room,' as [resentencing counsel] later referred to it.").

Considering all of this evidence and everything Owens presented to accompany his request for a second proportionality review, including the recent study conducted by Professor Baumgartner and Dr. Johnson, we again definitively find that Owens' sentence of death "was neither excessive nor disproportionate" under the constitution or section 16-3-25 of the South Carolina Code.

Conclusion

Because Owens' third PCR application is barred by the statute of limitations and is

impermissibly successive, he cannot show exceptional circumstances exist that warrant a stay of execution to pursue the successive application. Exceptional circumstances are also lacking for a stay based on the request for a writ of habeas corpus as Owens has failed to meet his burden of showing a constitutional violation that, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. We, therefore, deny the petition for a writ of habeas corpus and deny the motions for a stay of execution.



A.C.J.

J.

J.

A.J.

A.J.

Columbia, South Carolina
September 12, 2024

cc:
Alan McCrory Wilson
Melody Jane Brown
Donald J. Zelenka
Salley Wood Elliott
Gabrielle Amber Pittman
Joshua Snow Kendrick
Emily C. Paavola
Bryan Peter Stirling
Gerald W. King, Jr.

Exhibit 18

REPORT ON ADOLESCENT DEVELOPMENT
Prepared by Elizabeth Cauffman, Ph.D.

EXPERT BACKGROUND AND QUALIFICATIONS

1. My name is Elizabeth Cauffman. I am a Professor in the Department of Psychological Science at the University of California, Irvine (UCI) and hold courtesy appointments in the Department of Criminology, Law & Society, the School of Education, and the School of Law. I received my Ph.D. in Developmental Psychology with a specialization in adolescent development from Temple University. I completed a post-doctoral fellowship at the Center on Adolescence at Stanford University and have served as a member of the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. I served as a member of the National Academies of Sciences, Engineering, and Medicine's Committee on the Neurobiological and Socio-behavioral Science of Adolescent Development and Its Applications. In addition, I am the Director of the on-line Masters in Legal & Forensic Psychology at UCI and also direct the Center for Psychology & Law at the University of California, Irvine.

2. Findings from my research were incorporated into the American Psychological Association's amicus briefs submitted to the U.S. Supreme Court in *Roper v. Simmons* (2005), which abolished the juvenile death penalty, and in both *Graham v. Florida* (2010) and *Miller v. Alabama* (2012), which placed limits on the use of life without parole as a sentence for juveniles.

3. At the broadest level, my research addresses the intersection between adolescent development and juvenile justice. I have published over 150 articles, chapters, and books on the study of contemporary adolescence, including adolescent brain development, risk-taking and decision-making, and juvenile justice. In addition, I have received over $35 million dollars in funding from both the Federal government (e.g., National Institute of Mental Health, Office of Juvenile Justice and Delinquency Prevention, National Institute of Justice, etc.) private foundations (William T. Grant Foundation, John D. & Catherine T. MacArthur Foundation, etc.), and county agencies (Orange County Health Care Agency) to conduct my research.

4. I have served as a consultant on numerous cases and have testified as an expert witness in court over 60 times. Usually my testimony pertains to the sentencing phase of the defendant; however, several cases have involved the guilt phase or whether the youth was competent to stand trial. In addition, I have also served as an expert witness on the issue of transferring juveniles to adult court as well as the re-sentencing of juveniles who have received life without the possibility of parole. I have testified as an expert in both state and federal court.

REASON FOR REFERRAL

5. I was contacted by Teresa Norris to provide information on normative adolescent development as well as adolescent brain development and how adolescents' have capacity for change as they grow up. Particularly, I was asked to summarize – in a user friendly way – the recent research on adolescent development as it applies to Marion Bowman who I am informed was 20 years old at the time of the offense.

CONCLUSION

6. Developmental science demonstrates that important neurobiological development is ongoing throughout the teenage years and continuing into the mid 20s. As a result of neurobiological immaturity, teenagers continue to demonstrate difficulties in exercising self-restraint, controlling impulses, considering future consequences, and resisting the coercive influence of others. Heightened susceptibility to emotionally laden and socially charged situations renders adolescents more vulnerable to the influence of others, and in such situations adolescents are even less able to consider and weigh the risks and consequences of a chosen course of action.

7. As Marion was 20 years old when the incident occurred, research on adolescent development, in general, and brain development, in particular, provides insight into his developmental status at the time of the offense. As the pre-frontal cortex of the brain is not fully mature until approximately age 25, it is likely that Marion was unable to regulate his emotions effectively (as the pre-frontal cortex is responsible for such self-regulatory behavior). It is also important to note that Marion had a history of abusing substances (alcohol, in particular). Research shows that substance use affects the development of brain structures that regulate behavioral, emotional, and cognitive processes. Finally, as noted by the Pathways to Desistance study, the majority of youth who commit serious crimes stop their criminal behavior as they transition to adulthood (roughly 24-25 years of age).

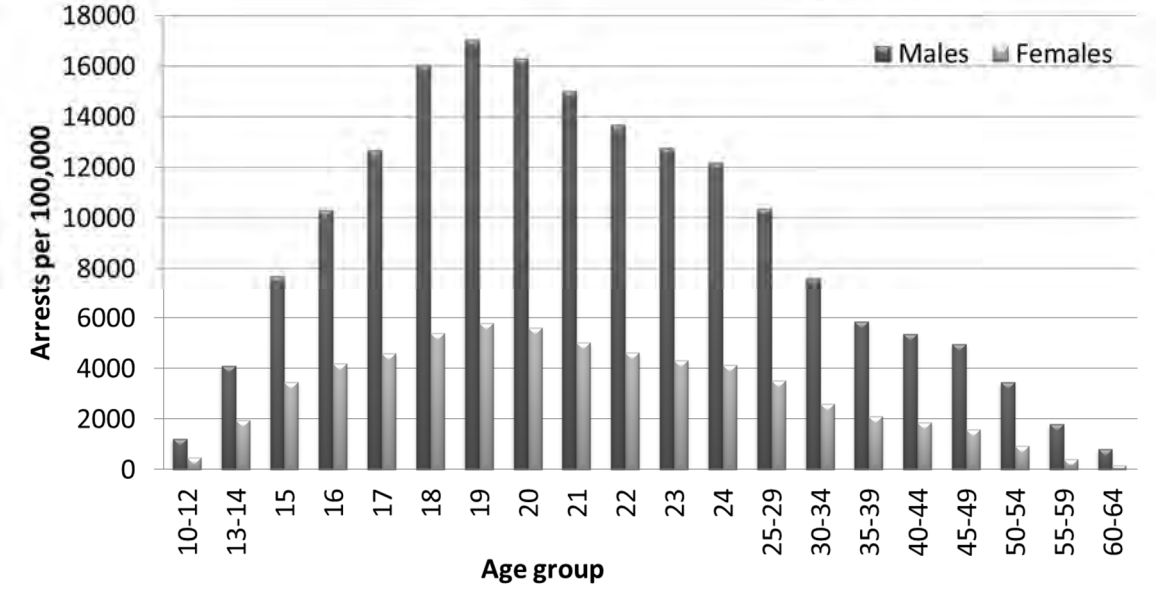
8. As age is not development – merely a marker of development – and as noted in the scientific research discussed in recent U.S. Supreme Court decisions (i.e, *Roper v. Simmons*, which abolished the juvenile death penalty, and in both *Graham v. Florida* and *Miller v. Alabama*, which placed limits on the use of life without parole as a sentence for juveniles), adolescents are developmentally different from adults and thus, the signature qualities of adolescence reduce their culpability and increase their capacity for change.

DEVELOPMENT & RISK TAKING CONTINUE AFTER AGE 18

9. Adolescence is a unique stage of human development. It is commonly defined as beginning at age 10 or 11 and continuing until the mid 20's. As such, scientists who study adolescence differentiate among *early adolescence* (ages 10 to 13), *middle adolescence* (ages 14 to 17) and *late adolescence* (ages 18 to 25) (Arnett, 2000; Kagan & Coles, 1972; Keniston, 1970; Lipsitz, 1977). In addition, adolescence has long been regarded as a period of poor decision-making and rash behavior. This account of adolescence is reinforced by empirical data surveying a range of behaviors, such as illicit drug use (Monitoring the Future, 2009), reckless driving (Chen, Baker, Braver, & Li, 2000; National Highway Traffic Safety Administration, 2007), unsafe sex (Finer, 2010), and criminal activity (Piquero, 2008; Stolzenberg, & D'Alessio, 2008). The pattern observed across these diverse studies is one in which risky behavior becomes increasingly common during adolescence, peaks in late adolescence and then declines.

This pattern is often referred to as the age-crime curve (See Figure 1; Federal Bureau of Investigation, 2010).

FIGURE 1: Age-Crime Curve based on FBI Uniform Crime Reports



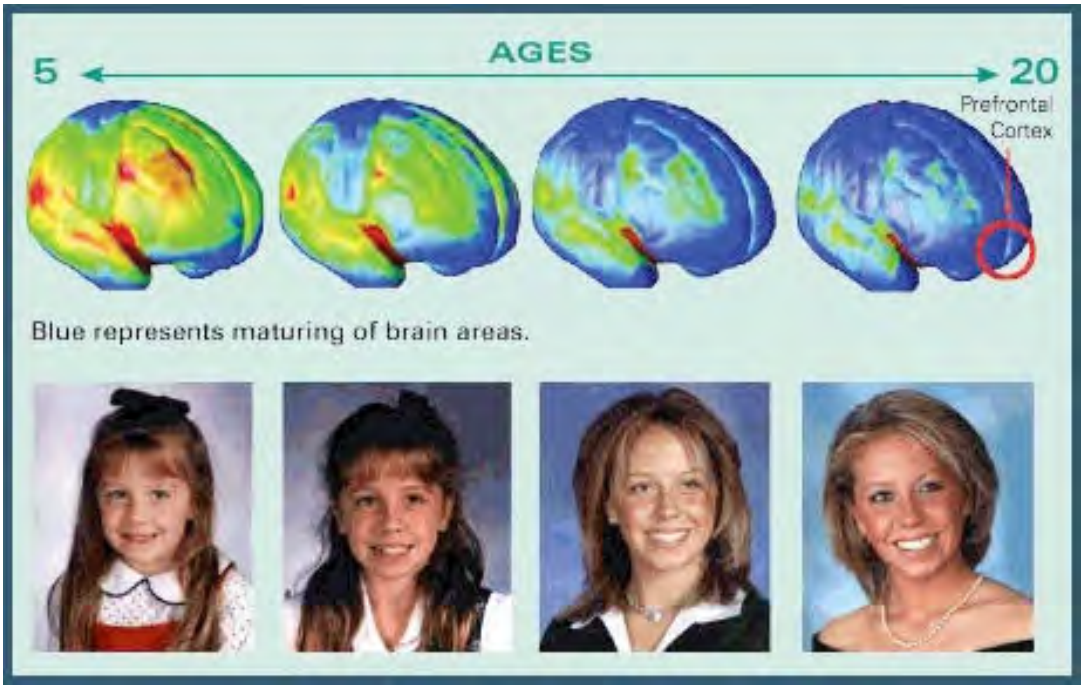
10. When combined with more fine-grained studies showing specifically how susceptibility to peer pressure, impulsivity, risk taking, and short-term thinking do not subside until later in young adulthood, it becomes impossible to reconcile the argument that 18 years old is a sensible age at which to expect people to "know better" and to be "responsible" with the observation that these indicators of impulsive, reckless, self-destructive, and antisocial tendencies peak at precisely this point. For example, in a study of over 1,000 participants ranging in age from 12 to 48 years, impulsivity declined, the ability to think long term increased, and individuals became more responsible as they transitioned out of adolescence and into adulthood (Cauffman & Steinberg, 2000). In another study comparing adolescent and adult decision-making, results indicated that, when asked to evaluate hypothetical decisions, adolescents as old as 18 years of age were less likely than adults to mention possible long-term consequences, to evaluate both risks and benefits, and to examine possible alternative options (Halpern-Felsher & Cauffman, 2001). Furthermore, a study involving a gambling task with more than 900 individuals ages 10 to 30 found that late adolescents focus more on the potential rewards of a risky decision than to the potential costs, whereas adults tend to consider both (Cauffman, et al., 2010). These empirical studies confirm that adolescents – even older adolescents – have not fully developed these abilities which may account for their poor decision-making and immature judgment.

BRAIN DEVELOPMENT CONTINUES UNTIL AGE 25

11. What accounts for these differences between adolescents, including those in the transitional period between adolescence and adulthood, and adults with respect to risk-taking, planning, inhibiting impulses, and generating alternatives? Recent research demonstrates a biological dimension to adolescent behavioral immaturity: the human brain does not reach its mature, adult form until after the adolescent years have passed and a person has entered young adulthood, which occurs at approximately age 25 (Gotgay et al., 2004).

12. Although the majority of brain growth occurs prior to adolescence, there is considerable refinement within the brain that occurs across adolescence and through the transitional period – particularly in the area of the prefrontal cortex, which is among the last to develop (See Figure 2; Giorgio et al., 2010). The pre-frontal cortex is like the CEO of the company. It is responsible for the evaluation of future consequences, the ability to weigh risks and rewards, and general decision-making processes (Bechara et al., 2000). In addition, this region of the brain is also essential for controlling emotions and inhibiting impulses (Casey et al., 2000).

    FIGURE 2: The adolescent brain continues to develop until approximately age 25



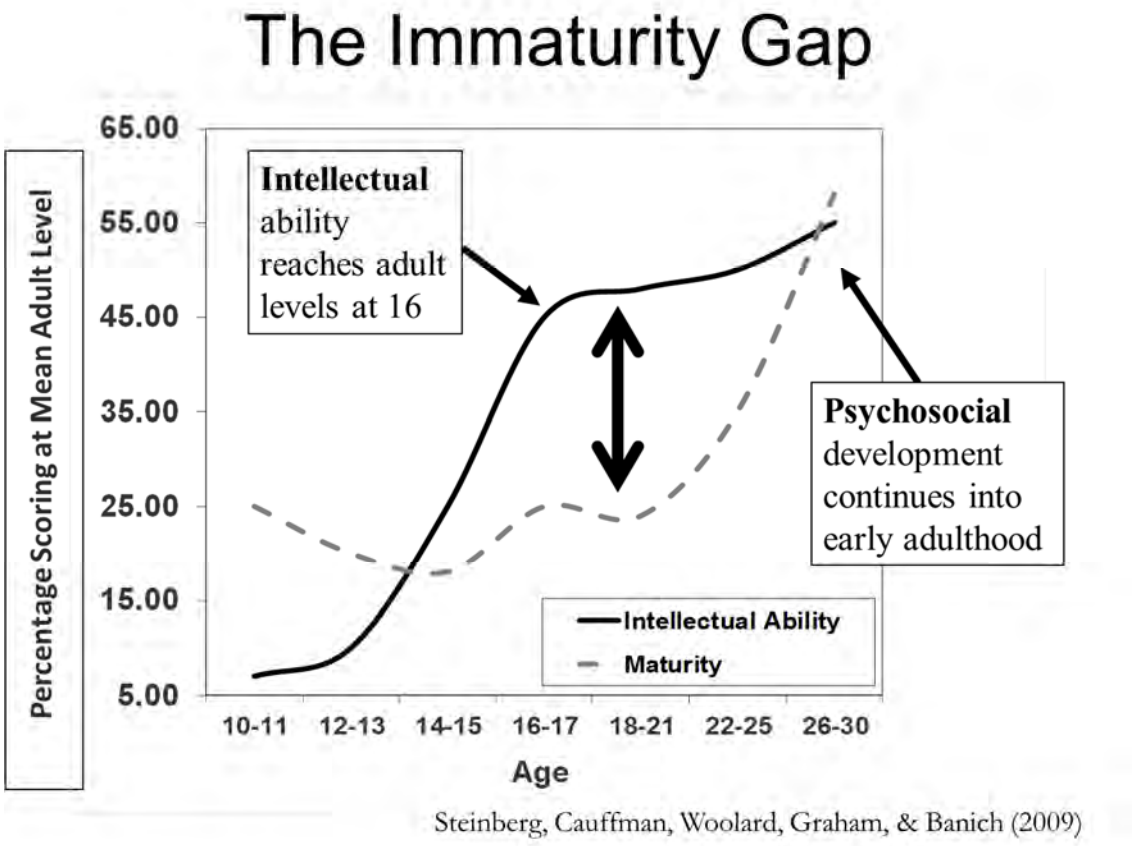
13. This refinement is evidenced by brain imaging studies that reveal increases in white matter volume (Giedd, 2004) and density (Paus et al., 1999), as well as decreases in grey matter (Sowell, 2001). Specifically, the brain undergoes myelination, the process through which the neural pathways connecting different parts of the brain become insulated with white fatty tissue

called myelin (Paus, 2010). This insulation makes connections between different parts of the brain faster and more reliable and, thus, aids in the speed of neural transmission which is important for the processing of emotion and social information (Sowell et al., 2001). Decreases in grey matter volume are thought to reflect synaptic pruning (the systematic elimination of synapses that are not used or are less efficient; Luciana, 2013). For example, just as a gardener prunes away the unnecessary branches of a rose bush to help it grow, the brain prunes away unnecessary synapses so that the transfer of neural connections is more efficient. Research finds synaptic pruning is not complete during early adolescence, as was once thought, but rather continues well into the third decade of life (Petanjek et al., 2011). In short, the part of the brain that is critical for the control of impulses and emotions and maturity, considered decision-making is still developing in late adolescence and these important aspects of brain maturation remain incomplete until, at least, age 25.

14. In addition, the sensitivity of the brain to specifically social rewards, such as peer acceptance, during adolescence is consistently seen across many studies using various methodological approaches (see review by Sebastian, Viding, Williams, & Blakemore, 2010). Specifically, during puberty, it is thought that gonadal hormones affect the activity of oxytocin in socio-emotional brain regions, specifically the amygdala and the nucleus accumbens (Nelson, Leibenluft, McClure, & Pine, 2005). Oxytocin plays a crucial role in social bonding and regulates the recognition of social stimuli (Insel & Fernald, 2004). This change in the activity of oxytocin in the socio-emotional system of the brain is thought to make adolescents respond differently to social stimuli, affecting their subsequent emotional and behavioral responses.

15. With the aid of advanced brain imaging technology and well-validated behavioral tasks, researchers are pinpointing the conditions under which adolescents' decision-making differs from adults' and illuminating the neurological developments that may correspond to these age differences. Synthesizing data from several lines of work, findings suggest that increased risk-taking in adolescence results from asynchrony in the development of one's psychosocial (e.g., self-regulatory system) and cognitive ability (e.g., intellectual ability). While one's cognitive ability (i.e., the ability to think) reaches adult levels at approximately age 16, the psychosocial/self-regulatory system continues to develop at a steady pace from childhood into adulthood. The maturation of this psychosocial/self-regulatory system, which involves the prefrontal cortex and its connections with subcortical regions, is associated with improved impulse-control, harm-avoidance, and modulation of emotional and behavioral responses. In fact, research has shown that by age 16, adolescents' general cognitive abilities are essentially indistinguishable from those of adults. Adolescents' psychosocial functioning, however, even at the age of 15, is significantly less mature than that of individuals in their mid-20s (See Figure 3; Steinberg, Cauffman, Woolard, Graham, & Banich, 2009). As such, in situations that elicit impulsivity, that are typically characterized by high levels of emotional arousal or social coercion, or that do not encourage or permit consultation with an expert who is more knowledgeable or experienced, adolescents' decision making is likely to be less mature than adults'.

FIGURE 3: Differences in the development of the psychosocial and cognitive (intellectual) systems



SUBSTANCE ABUSE ALTERS BRAIN DEVELOPMENT AND SLOWS NORMATIVE DEVELOPMENT

16. Evidence submitted in Marion's case indicates that he abused substances (primarily alcohol). Adolescent substance use has been shown to impair psychosocial maturity by affecting the development of brain structures that regulate behavioral, emotional, and cognitive processes (Clark, Thatcher, & Tapert, 2008; Moss, 2008). Many of the brain regions that undergo developmental change during adolescence are also affected by alcohol and drug use (Volkow & Li, 2005). For example, fMRI studies suggest that the prefrontal cortex and sub-cortical striatal areas are both actively engaged in decision-making and affected by addictive substances (Chambers, Taylor, & Potenza, 2003) and substance use may also affect brain circuits involved in the experience of reward and self-regulation (e.g. Brown & Tapert, 2004). For example, research has shown that adolescent substance use leads to poorer neurocognitive performance, poorer white matter quality, and changes in brain volume (Squeglia, Jacobus, & Tapert, 2009). Substance use has also been associated with heightened impulsivity (Colder & Chassin, 1997), impaired affect regulation (Cooper, Agocha, & Sheldon, 2000), poor judgment (Giancola, Martin, & Tarter, 1996), and less successful decision-making (White, 1990). In

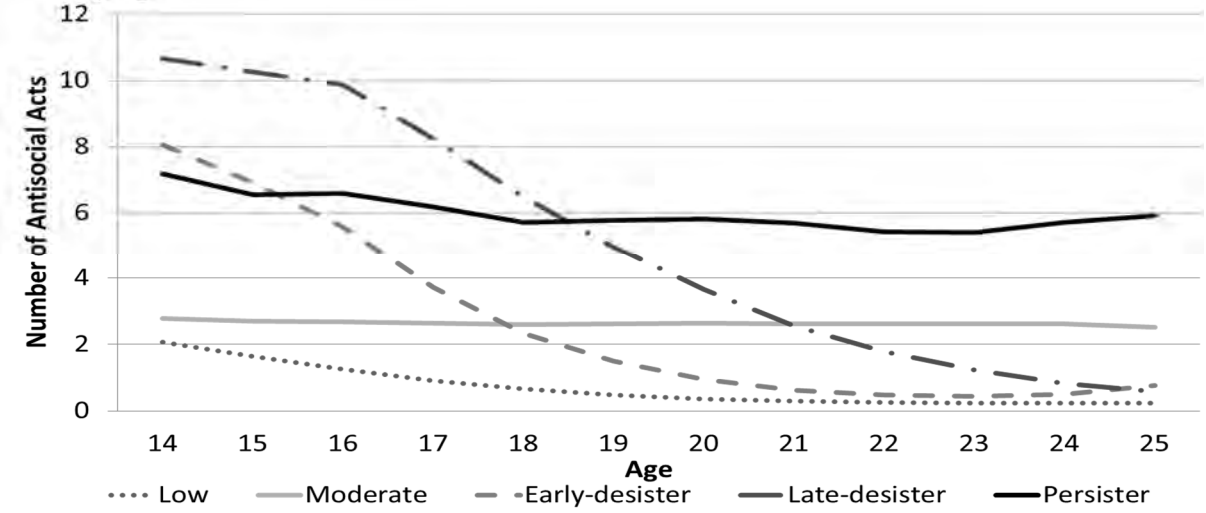
addition, individuals with substance dependence tend to choose small immediate rewards over larger postponed incentives (Potenza, 2007), display a reduced sensitivity to natural reinforcers, and show decreased inhibitory control (Volkow, Fowler, & Wang, 2003). These findings suggest that substance use may suppress age-typical growth in psychosocial maturity from adolescence to young adulthood, however, when youth stop using substances they do regain in psychosocial maturity (Chassin, Dmitrieva, Modecki, Steinberg, Cauffman, Piquero, Knight, & Losoya, 2010).

THE VAST MAJORITY OF ADOLESCENTS DESIST FROM CRIME BY AGE 25

17. As adolescents transition to adulthood and their cognitive and psychosocial systems become fully mature, we would expect to see improvements in self-regulation and a gradual ceasing of engagement in criminal behavior. Thus, one way to consider the impact of this development on crime is through a study of why and when adolescents desist from (stop) criminal behavior. The Pathways to Desistance Study was designed for the express purpose of examining the second half of the age-crime curve: the desistance tail. Pathways, a prospective longitudinal study of over 1,300 serious adolescent offenders (e.g., offenses included robbery, aggravated assault, murder, etc.), tracked desistance from crime across adolescence and into adulthood. Youth who had committed serious felony level offenses were recruited for the study between the ages of 14-18 and were interviewed over 7 years, completing the study at ages 21-25 (see Schubert et al. 2004 for details on the study's methodology).

18. As illustrated in Figure 4, the Pathways study found that most youth, despite being serious felony offenders, do indeed desist from crime; less than 10% of the participating youth persisted in high-level offending after 7 years (see Figure 4; Monahan, Steinberg, Cauffman & Mulvey, 2013).

FIGURE 4: Pathways to Desistance Study: The majority of serious adolescent offenders desist from crime by age 25.



19. Indeed, the major factor that distinguished those youth who persisted at a high level from those who desisted or remained at low levels was the increase in their psychosocial/self-regulatory development. Specifically, youth who persisted in offending displayed less psychosocial maturity (particularly lower levels of impulse control, suppression of aggression, and future orientation), while youth who stopped their criminal behavior displayed developmentally normative increases in these domains (Monahan, Steinberg, Cauffman, & Mulvey, 2013). In sum, the desistance tail of the age-crime curve may be largely (though certainly not wholly) explained by normative developmental changes that occur across adolescence and into adulthood.

SUMMARY

20. It is important that justice system responses take the developmental considerations described above into account. Specifically, although youth who commit crime should unquestionably face consequences for their offenses, the sanctions applied should be appropriate to the offender's developmental status, amenability to future change, and degree of culpability (which may be lowered because of the diminished reasoning capacity implied by a lack of fully developed impulse control or ability to recognize long-term negative consequences of risky behavior). In Marion's case, there is no reliable scientific way to distinguish the development of someone who is 20 years old (the age Marion was at the time of the offense) from someone who is under 18. Further, substance abuse has been shown to impair psychological maturity, however, once substance use has ceased then psychosocial maturity will rebound. These are appropriate factors to consider in assessing Marion's degree of culpability and punishment.

6/4/2023

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Exhibit 19

Psychiatric Evaluation
Marion Bowman, Jr.
Date of Birth: [redacted]
Dates of Evaluation: 2/23/23, 5/1/23
Date of Report: 6/5/23

Identifying Information: Mr. Marion Bowman is a 42-year-old male evaluated pursuant to a request from his attorney, Teresa Norris. Mr. Bowman was convicted of Murder and third-degree arson in Dorchester County. He was sentenced to death for the murder of Kandee Martin and a ten-year imprisonment for the Arson in May 2002 in Dorchester County.

Qualifications of Examiner: I, Donna S. Maddox, MD, am a physician licensed to practice medicine in the State of South Carolina. I have been qualified as an Expert in Forensic Psychiatry in numerous state and federal courts. I evaluated and treated juveniles as a contract psychiatrist at the South Carolina Department of Juvenile Justice for over 15 years. I also worked as a contract psychiatrist for the South Carolina Department of Corrections for a period of four years treating mentally disordered inmates. Additional details can be found in my curriculum vitae.

Sources of Information

Fact Chronology by K. Fuhrmeister 3/8/23

Developmental Records:
Marriage certificate Marion Bowman Sr and Denise Bowman 8/17/78
Marriage certificate Marion Bowman Sr. and Florence
Birth certificate Marion Bowman Jr.
Marriage certificate Marion Bowman Jr and Dorothy
Family Court Divorce Records Denise and Marion sr.

School records:
New York District File
Orangeburg School District 8
Palmetto Unified School records
Orangeburg District 4 Branchville HS
Orangeburg District 4

Employment Records
Moody's Mechanical

Medical Records
Orangeburg Regional Medical Center
Pediatric Records Dr. Belding

Orangeburg Calhoun Regional Medical Center records

Mental Health Records

DMH report and records from Pratap Narayan, MD CST 5/7/2001
Mental Health referral 2/8/95

Substance Abuse Treatment records
Tri County Admission Drug and Alcohol Abuse
SC Drug and Alcohol Programs
William J. McCord

Jail records:
Dorchester County Detention Center records 2/01-3/02

Prison Records:
SCDC prison records 1998-2023

Court cases:
State v Bowman 11/28/05
Bowman v. Stirling 3/26/20
Marion Bowman Jr. v Stirling 8/16/22

Memorandums of Interviews of Corrections officers, prison ministers and inmates regarding adaptation to prison:
Memorandum of interview Fred Thompson 4/17/23
Memorandum Interview Lt. Darryl McGee 3/8/23
Memorandum Interview Ernest Riddle 4/14/23
Memorandum Interview Gordon Manning 3/7/23
Memorandum Interview Jimmy Stewart 3/7/23
Memorandum Interview Larry Tyree 4/13/23
Memorandum Interview Ralph Hunter 3/7/23
Memorandum Interview Stan Burtt 4/13/23
Memorandum Interview Vaughn Johnson 4/17/23
Memorandum Interview Eddie Beery 3/14/23
Memorandum Interview Derek Walden 4/18/23

Affidavits of Family Members:
Joseph Sims 11/23/18

Present Consultations/Reports:
Joette James, Ph.D. 5/5/23
Robert Ellis, MD 5/5/23
Susan Knight, Ph.D.5/5/23 (consultation) 6/5/23 (report)

Elizabeth Cauffman, Ph.D. 5/24/23

Past Evaluations:
Psychosocial Assessment Jeff Yungman 5/21/02
DMH Competency To Stand Trial Evaluation 5/17/01 P. Narayan, MD and T. Brawley Ph.D.
DMH Criminal Responsibility Evaluation 5/7/01
Letter of Neuropsychological test results J. James, Ph.D. 4/12/23

Developmental History:
Mr. Bowman's parents were married in 1978. Denise was 15 and Marion Sr. was 20. Their first child, Kendra was born on 1/14/79. While pregnant with Mr. Bowman, Denise was treated for premature labor at 37 weeks at Orangeburg Regional Medical Center. Marion Bowman, Jr., was born a week later on 6/6/80. He weighed 5.4 lbs. Denise Bowman had five prenatal visits during her pregnancy. Their third child, Yolanda was born on 8/9/81.

Denise and Marion Sr. separated in 1984, and Denise maintained custody of the children. Marion received speech therapy from 1985-87 through the Orangeburg School District 4. Mr. Bowman Sr applied for visitation in 4/87. Their divorce was final on 7/10/87. Mr. Bowman Sr. remarried Florence Bowman on 3/1/90.

Denise Bowman and the children lived with Joseph Sims from 1990-97. Mr. Sims was a truck driver. The family moved to Queens, New York in March 1991. Mr. Sims and the Bowmans lived in the downstairs basement while Mr. Sims' mother and two aunts lived upstairs. Marion Jr. described this period as a happy time in his life. He stated he liked New York, although he was teased about his accent and "ratty clothes." He denied that the education was more difficult. The family returned to South Carolina in July 1992, but Mr. Bowman reported Kendra remained in New York for another year.

The DMH reports indicate that Marion Jr. had no contact with his biological father until age 13.

In an affidavit, Mr. Bowman's mother was referred to as a prostitute by her former paramour Joseph Sims. The federal court file indicated the mother prostituted herself to support her family, and the children in the hometown were treated differently based on their race. Mr. Bowman's mother had multiple legal charges during his development including Food Stamp Fraud (1/31/85), and Possession with Intent to Distribute Marijuana (4/26/2000.) Mr. Bowman denied knowledge of her promiscuity or illegal behaviors. He referred to himself as a "Dixie Cup kid." When questioned about the phrase, he replied: "you throw it away." He did report memories of her being disabled. He stated she had Rheumatoid arthritis and had multiple back and knee surgeries. He recalled buying her "cluster rings" for her birthday because they were thin enough to be cut off when her fingers swelled. Social worker, Jeff Yungman testified that Denise was receiving Workers Compensation in 1998.

Mr. Bowman admitted to a strong attachment to his stepfather, Joseph Sims and his step grandfather. Mr. Bowman reported that Mr. Sims "took the pressure off "by providing for the

family. Mr. Bowman reported that Mr. Sims was a truck driver, which became a vocational goal for him. He reported that Mr. Sims "is still my dad to this day." Mr. Bowman reported he does not have contact with him presently.

Mr. Bowman did endorse awareness that his biological father was abusive to his mom.

School History:
Orangeburg School District 4 records indicate Marion Jr. had an IEP for speech therapy in 1985. Marion Jr. reported he "remembered some speech therapy in first grade." He could not recall whether he had difficulty with articulation or stuttering.

As his elementary school education progressed, his standardized test scores begin to fall.
On 10/15/90 at the age of ten, Marion Jr. had his first referral for chronic behavioral problems.

A Medical note from his 4th grade Branchville Elementary School record indicates a teacher grabbed his arm, and he had abrasions. His mother was involved. He had to repeat 4th grade. When questioned about that school year, he replied: "I was hungry, angry and not stable."

The school records indicate Denise withdrew him from school to transfer to New York for the 1991-1992 school year. There are no records that Marion or his siblings were attending school in the Fall of 1991. A note from the school district indicated one of the children had been seen on September 28 of that year.

The school records from New York indicate he missed a lot of school in 5th grade. He missed 18 days during his last semester.

He moved back to South Carolina for 6th grade.

He was recommended for expulsion on 2/17/93 after attempting to hit another student with a pine limb. He was allowed to return under probation. Marion Jr. stated he fought a twin named Devin. He stated earlier in the day, Devin's twin, Kevin hit him with a stick.

Records indicate he attended weekend school on 11/29/95 to help with his grades.

On 12/3/95, he was suspended for five days for stealing calculator.

He was absent 19 days during his 9th grade year.

In 10th grade, he attended the Alternative Learning Environment program. The plan was for him to go to Palmetto Unified Vocational school in 1998. He did not complete the 10th grade.

He has not received or tested for his GED.

Vocational History

Marion Jr. worked for Hood Construction from 12/97-4/99. He then worked for Moody Mechanical in 5/26/99 and was living in Georgetown.

He was charged with Driving Under Suspension and was fired on 7/30/99. He stated he did not return to work at Moody after his grandfather died. He stated his grandfather died on his 19th birthday. Jeff Yungman testified on 3/26/02 that Marion "felt dead" when his grandfather died. He was not employed at the time of the current offense.

Family History:
Mr. Bowman's family history is significant for a completed suicide.
Records from the Branchville Police Department from 7/28/97 indicate Mr. Bowman's cousin killed himself with a gun. Numerous studies indicate that the rate of suicide is significantly higher in the families of suicide victims than in families without such history. "Family History of Suicide Among Suicide Victims "Am J Psychiatry 2003; 160:1525-1526.

Mr. Bowman's family history is significant for alcoholism.
There are reports of heavy alcohol use on his mother's side of family. The Tri County records from 1995 also note his father drank. Both the age of onset and a family history of alcoholism contribute to a person's risk of becoming alcohol dependent. The original data was collected in a 1992 National Longitudinal Alcohol Epidemiologic Survey. Persons with a family history of alcoholism had a higher prevalence of lifetime alcohol dependence. Youths whose parents have alcohol use disorder are at higher risk for earlier initiation and greater magnitude of alcohol use and have a higher likelihood of developing Alcohol Use Disorder. "Parental family History of Alcohol Use Disorder and Neural Correlates of Response inhibition in Children from the Adolescent Brain Cognitive Development Study" Alcohol Clinical and Experimental Research (44) 6: 1234-44, 2020.

Mr. Bowman's family history is significant for autoimmune disorder.
Mr. Bowman reports his mother has Rheumatoid arthritis which is an autoimmune disorder which can be inherited.

Medical History:
Mr. Bowman was treated for a fractured arm at age 2 on 5/12/82. He was treated at Orangeburg Regional Medical Center. His pediatric orthopedist, Dr. Belding performed an Open Reduction and Internal Fixation.

Mr. Bowman was burned with a kerosene heater on his right palm on 9/18/86. When questioned, he did recall the burn. "My mother took me to a fire talker." He stated the "fire talker" blew on his hand and the burn no longer hurt. His mother also took him to his pediatrician.

Mr. Bowman was involved in a car wreck on 1/13/87. He was unrestrained and hit his head on the back of the front car seat. He was treated at the Orangeburg Regional Medical Center. He denied a loss of consciousness but did report he hit his head.

Mr. Bowman reported two head injuries in adolescence as well. On 12/19/99, he reported his sister was driving and their car was t-boned when a woman ran a stop sign. He stated he was a restrained passenger in the back seat. He states his head hit the rear passenger window on the right side. He reported headaches after this accident. He was seen in the Regional Medical Center Emergency Room. His C-spine was x-rayed. He was discharged with a cervical collar.

Mr. Bowman reported a "slip and fall" injury eight months before his charges in June 2000. He stated he fell from a picnic table and "woke up bloody and laying on table." He reported he lost consciousness. He reported he "definitely" had headaches after this injury.

He reported additional head injuries to Dr. Narayan during his 5/01 evaluation. He reported at age 17 he was assaulted, and he reported a recent slip and fall at a gas station. He described some headaches.

Mr. Bowman is presently treated for hypothyroidism which has caused him to gain extensive amounts of weight at various times during his incarceration. He is presently stable on Synthroid.

Mr. Bowman had a surgical decompression of a herniated nucleus pulposus on 9/2/19. He was hospitalized on 9/11 with urinary retention. He was treated at Palmetto Prisma for 11 days and then the Kirkland Infirmary for four days. He wore a foley catheter until November 2019. He has some chronic pain which is managed with Duloxetine. By 2020, he returned the wheelchair and his walker and worked hard at his rehabilitation.

Additionally, he is treated for Hyperlipidemia with Pravastatin, Lisinopril® for hypertension and Tamsulin® for Prostatic Hypertrophy.

Substance Use History:
Prior to his offense and after the death of his grandfather, Mr. Bowman was consuming large amounts of alcohol on a daily basis. Consistent with research on persons with a family history of alcohol use disorder, Mr. Bowman began drinking at a younger age.

He reported he was drinking sips of alcohol from his uncle in fourth grade.

The report of Dr. Brawley and the testimony of Jeff Yungman noted he started drinking at age 14. Mr. Bowman reported he could drink up to ten beverages before getting drunk. Dr. Narayan diagnosed him with Alcohol Abuse and Personality Disorder Not Otherwise Specified with Antisocial traits. The DMH report indicated Mr. Bowman's alcohol intake increased at age 16 when he quit smoking marijuana.

Mr. Bowman reported he "drank all day and every day." He stated he began drinking after he "took the kids to school." He stated he would walk to the store to get a quart of malt. He stated he would return to the store again for another malt if he finished before 9 am. He stated once

the liquor store opened at 9am, he would buy a pint of gin and drink that during the day. He stated he would drink beer for the remainder of the day after finishing the gin. He reported he never "felt drunk." He stated he ate during the day. He stated he would grill chicken livers and other meats while he drank.

The Dorchester County Detention Center records from 2/20/01 noted he drank alcohol and beer, at least one quart every day.

Mr. Bowman told Narayan he was drinking on the day of offense.

Mental Health History:
He had no history of inpatient psychiatric treatment. He had two brief episodes of outpatient treatment. He is not mentally ill.

Beginning on 2/8/95 at age 15, Mr. Bowman received services from the Tri County Commission on Drug and Alcohol Use. He was diagnosed with a Phase of Life problem. He reported little contact with his father. He was referred for treatment because he was in trouble for referrals from school. The record noted that his father drank. Mr. Bowman reported a "high temper." A note from 5/19/95 indicates he attended groups and did well. He completed the structured group counselling. Of note, the record made mention that Kandee Martin also participated in this program.

Mr. Bowman had another brief period of treatment while incarcerated after the death of a family member. He was diagnosed with normal bereavement on 7/13/20.

Social:
Mr. Bowman has excellent family support.

Mr. Bowman married Dorothy Mae Williams (Dot) on 12/6/99. He was 19 and she was 23. They remain married and in communication and share a daughter Marissa. Marion Jr. and Marissa talk regularly. She also visits him. Mr. Bowman reported he will soon be a grandfather.

Mr. Bowman has excellent family support. He speaks with his cousin, daughter, mother, father and aunt regularly. He continues to have visits from his mother and sister, Kendra. He reported he continues to speak with his father. Marion Jr. reported that his mother is 60 years old and continues to have back and knee problems. His sister Kendra is 44 years old. His sister Yolanda is 41 years old, and his half-brother Mario is 33 years old.

Legal History:
Mr. Bowman's legal history was significant for the year prior to his current offense. After he was charged with Possession of a Pistol during a traffic stop on 8/4/2000, Mr. Bowman

reported he stopped checking in with is probation officer. He was eventually charged with Failure to Report. This is also the period when he was drinking larger amounts of alcohol. He was 20 years and 8 months old at the time he was charged with the Murder of Kandee Martin.

Prior to his offense, Mr. Bowman had four prior convictions for Larceny or Burglary according to court records. While he was detained for his murder charges, he was charged with another Burglary and Grand Larceny.

He had DJJ charges of Simple Assault and Malicious Injury to Property which were dismissed.

Mr. Bowman was charged with Burg 2nd and Petty Larceny on 7/27/97. He spent 25 days in jail. He and codefendants stole a gun and money. He was sentenced to a 1–5-year shock sentence and ordered to pay restitution. He entered SCDC on 3/13/98. Marion Jr. reported that the cousin who committed suicide used that gun to kill himself. Mr. Bowman reported he was not involved in the string of burglaries going on in town but would not tell on his peers.

On 7/25/00, he was charged with Grand Larceny and Burglary, first degree.

On 8/4/00, he was charged with Possession of a Pistol. He stated he was riding with his cousin, and they were stopped by the police. He stated the police officer told him he would serve five years because he was on probation. Mr. Bowman stated at that point, he no longer checked in with his probation officer. He stated the gun belonged to his cousin. This charge was dismissed.

On 10/28/00, he was charged with receiving stolen goods.

On 12/5/00, he was cited for failure to report, and failure to complete public service.

On 12/29/00, he failed to appear and a warrant for his arrest was issued.

He was charged with Murder and Arson third degree on 2/16/01. The trial aggravators were murder during the commission of a kidnapping and during the commission of larceny with a deadly weapon.

Institutional History:

Mr. Bowman was sentenced to the YOA SHOCK program in 1998 for the Burglary, 3rd degree and the two Petty Larceny charges. He was admitted to SCDC on 3/13/08. He was 17 years old. At the time of his incarceration, he was 6'3" and 210 lbs. He was cleared medically and psychiatrically to complete the program at Stevenson Correctional Institution. He was involved in a physical altercation with another inmate MS who was observed pushing Mr. Bowman by corrections officers. He was placed in the Special Management Unit and his SHOCK program was

extended for two weeks. His completion date was moved from 6/22/98 until 7/6/98. He was conditionally released without further extensions.

He was arrested on 2/17/01 for an Outstanding Receiving Stolen Goods warrant. During this detention, he reported he was drinking everyday compared to past disclosures. He reported drinking a quart per day. He was charged with the Murder of Kandee Martin on 2/19/01.

He was sentenced to death on 5/23/02. He was admitted to SCDC on 5/24/02 at the age of 21. He was housed at Lieber Correctional Institution. His YOA was revoked on 7/15/02. He was placed on Security Level III-DR.

On 6/7/03, Mr. Bowman was charged with a non-assaultive disciplinary, Institutional threatening to inflict Harm by CO Eaton (known to this examiner). The charge was reduced to using vulgar language.

On 11/28/05 his death sentence was affirmed on direct appeal.

On 1/9/07, an item described as a ski mask was found in Mr. Bowman's cell and he was transferred to supermax pending an investigation but ultimately was never charged with contraband or any other offense. Mr. Bowman reported the alleged mask was a hat he wore for rec on cold mornings. He stated the holes in the hat were for his dreadlocks. During that period, Lt. McGhee reported he received an outside call that Mr. Bowman and other inmates were planning to escape. Mr. Bowman was never charged. On 1/26/07, his security level was decreased to I-DR. He was transferred to the Special Management Unit at Kirkland on 2/6/07. He was advanced to Security Level 2 on 5/24/07. He was advanced to Security Level III on 6/21/07. He was transferred back to Lieber.

On 11/6/07 he was charged with Disrespect, according to a record summary.

On 2/14/08, he was charged with Damaging property when he and another inmate damaged their toilets.

On 12/19/08 he was involved in his PCR hearings.

He began developing medical problems in 2014 including blood in his stool.

On 4/15/16, the South Carolina Supreme Court denied review of his PCR appeal but did investigate one area which was denied on 1/10/18.

On 12/14/16 he was charged with Damaging Property. He damaged his toilet. He reported he had been window locked for days and was unable to receive legal mail.

On 9/26/17, Mr. Bowman and all other death row inmates transferred from Lieber to Kirkland.

10/6/17 Mr. Bowman began a hunger strike due to not receiving his property. He received his property and began eating the same day. Mr. Bowman reported to the undersigned that his hunger strikes are “nonviolent ways to protest prison conditions.”

He had another hunger strike on 12/17/17 and asked to speak with the warden. The strike lasted three days. The inmates had a list of grievances which included sanitary conditions, having to kneel to receive mail, and the overall conditions. By this time, Mr. Bowman was having back problems which resulted in surgery and nerve damage, so kneeling would have been especially painful for him.

Mr. Bowman began filing grievances on SCDCs grooming policies. He is Rastafarian and he believed that SCDC grooming policies were discriminatory. He was not requesting twists but to be able to braid his hair.

He began another hunger strike on 4/30/18. SCDC records noted his peaceful protest over being shackled when he is well behaved. He continued through 5/7/18 and requested to meet with the warden. He was in lockdown. During the hunger strike, he was tested and found to have hypothyroidism.

Death row was transferred Broad River Correctional Institution on 7/11/19. A medical note indicated he was pleased to look out of a window.

On 9/1/19, he was transferred to Richland due to his back condition. He had surgery on 9/2/19. He was discharged on 9/11/19. He had gained nearly 100 lbs by 7/20 until it was discovered his Synthroid had been discontinued.

Mr. Bowman recognizes that he has successfully adapted to long term incarceration. He has developed a routine, maintains familial relationships and focuses on others as part of his coping. Mr. Bowman also writes poems to cope. His health does not permit him to work various jobs as he did in the past. He continues to have complications from his back surgery including difficulty voiding.

Mr. Bowman reported being out of his room most of the day from 5:30 a.m. to 5:00 p.m. with the exception of 30 minutes around 8:30 a.m. and 30 minutes around 2:00 p.m. during count. He reported the following morning routine. He awakens at 3 am or 4 am. He says his prayers which include a daily Psalm. He then takes his cholesterol and thyroid medications. He watches the News. He speaks with his mother and then his cousin Quanisha. He will then associate with other inmates and play cards. He will also check on inmates who are lower functioning. Mr. Bowman was the Inmate representative for several years. Once he goes back in his room, he reads his Bible, writes in his journal or writes poetry, and watches tv. He stated he “cleans up” at 9:30 p.m. He then watches the Stephen Colbert show which he enjoys at 11:45 pm.

SCDC records have numerous citation which demonstrate positive coping on Mr. Bowman’s part. While at Kirkland awaiting transfer to Broad River, Mr. Bowman was questioned about a

necklace he wore. He reported the necklace had inspirational sayings and one had his daughter's name on it.

Various memorandums from present and retired SCDC employees indicate Marion Jr. has adapted well and has not been a behavioral problem.

Lt. Darryl McGee, who originally investigated Mr. Bowman for an alleged escape plan which never resulted in a charge was interviewed on 3/8/23. The interview resulted in a memorandum. Lt. McGee reported he retired in 2018. He remembered Mr. Bowman and did not recall that he was "a problem."

In a memorandum, Fred Thompson 4/17/23 was interviewed. He was the 1st major at Lieber, and retired in 2017. He did not recall Mr. Bowman being problematic and had no recollection of a ski mask incident.

The Chief Psychiatrist on Death Row, Dr. Ellis was interviewed by the undersigned on 5/5/23. He described Mr. Bowman as a "leader." Dr. Ellis reported he has known Mr. Bowman for five years. He stated he does not treat Mr. Bowman for mental illness but has worked with him while he was on the Inmate Representative Committee and subsequently because Mr. Bowman has been able to persuade noncompliant mentally disordered offenders to cooperate with Dr. Ellis' treatment. Dr. Ellis reported that Mr. Bowman's interpersonal skills differentiate him from many other inmates. He reported that Marion Jr. helps others. There is a note that while Mr. Bowman was IRC, he requested that two of the inmates on the restricted side be brought to the open side before Christmas. As was noted by Dr. Ellis, there was no secondary gain for his request. Dr. Ellis reported that Mr. Bowman is liked by inmates and staff. They refer to him as "the gentle giant" because his presence is calming. "He keeps the peace with his presence and calm demeanor." Dr. Ellis noted that Mr. Bowman is not antisocial. He reported that Mr. Bowman would be an asset in General Population because of his calming demeanor and concern for the wellbeing of other inmates and staff.

Mental Status Examination:
Mr. Bowman was pleasant and cooperative. He had a mildly antalgic gait. He maintained good eye contact throughout the evaluation. He had excellent hygiene. His speech was normal in rate and tone. His thinking was goal directed. His mood was euthymic. He was not suicidal or homicidal. There was no evidence of psychosis. His cognitive functions were intact. His judgment and insight are excellent.

Previous testing and Consultations:
Prior to his trial, Mr. Bowman was evaluated at the Department of Mental Health for his competency to stand trial and criminal responsibility. The presiding examiner was Dr. Pratap Narayan. He was also evaluated by a neurologist Dr. Steedman and tested by a

Neuropsychologist Dr. Brawley. Dr. Narayan noted his prior history of head injury. Dr. Steedman, the neurologist ordered a CT scan of the head which was unremarkable and also performed an EEG which was normal. Dr. Brawley administered the WASI (Wechsler Abbreviated Scale of Intelligence) and RBANs (Repeatable Battery for the Assessment Neuropsychological Status) and did not find any abnormalities. Dr. Narayan diagnosed him with Alcohol Abuse, Personality Disorder NOS with antisocial traits and opined he was competent to stand trial and criminally responsible. Dr. Brawley reported his Full-Scale IQ was 81, with a Verbal Scale of 86 and a Performance of 80.

He was seen by a private neuropsychologist, Brian West, Ph.D. on 4/4/02. Dr. James noted that Mr. Bowman was hit in the head with a baseball bat at age 17. He was seen by a private Forensic psychiatrist, Dr. Morgan. Neither expert issued a report.

Present Testing:
He was evaluated by neuropsychologist, Joette James, Ph.D. in March 2022 and a summary of testing report was issued in April 2023. Dr. James noted he gave a good effort across four tests. She administered the WAIS-IV and noted a Full-Scale Score of 84, a Verbal Score of 95, a Performance Score of 73 which has dropped, a Working Memory Score of 92, and a Processing Speed score of 92. He had a low score on block design and a Borderline score on visual puzzles.

Dr. James was consulted about her testing on 5/5/23. Dr. James noted that his cognitive function remains average and has not declined over time.

Opinions

1. At the time of his charges, Mr. Bowman's brain development was not yet complete. The prefrontal cortex which is responsible for executive functions does not mature until the mid to late 20s. Brain maturation during adolescence is influenced by heredity, environment, and hormones. Teen brains have less white matter (myelin) in the frontal lobes compared to adults. Myelin allows for better flow of information between brain regions. The prefrontal cortex regulates behavioral responses.
   Maturation of the adolescent brain. Neuropsychiatric Disease and Treatment 2013; 9: 449-61. ncbi.nlm.nih.gov.

2. At the time of his charges, Mr. Bowman's cognition was further impaired by his extensive use of alcohol.

   Alcohol and Adolescents

   Niaaa.nih.gov Alcohol's Effects on Health: Alcohol and the Adolescent Brain,2021. National Survey on Drug Use and Health reported that adolescents drink less than adults, but when they do drink, they tend to drink more. 8.3% of adolescents aged 12-20 reported binge drinking in the past month. The National Institute on Alcohol Abuse and Alcoholism (NIAAA) defines binge drinking as a pattern of drinking alcohol that brings Blood Alcohol Concentration to .08

grams/dl. Males would have five or more drinks in two hours. For adolescents, they need only three to five drinks. Adolescents are less sedated and have smaller impairments in coordination and balance which puts them at greater risk because they continue drinking and reach higher blood alcohol levels which further impair their decision making and impulse control.

Alcohol and Effects on Brain Function in Adolescents:
Alcohol misuse during adolescence has been linked to changes within and between brain regions. Researchers have found reductions in the size of the frontal lobe, hippocampus, amygdala, and corpus callosum. The adolescent brain is able to recover from some of the alcohol related changes.

3. Eight months before his charges, Mr. Bowman reported his third closed head injury which may have further impacted his cognitive function, he was not tested until after the TBI.

Adolescents and Traumatic Brain Injury
Adolescent traumatic brain injuries: Onset, mechanism, and links with current academic performance and physical injuries. ncbi.nlm.nih.gov PLOS One. 2020 15 (3).
Reports show that 15- to 19-year-olds have some of the highest emergency department visits, hospitalizations and deaths related to TBI. Studies show that 20-22% of adolescents sustain a TBI in their lifetime. As many as 5.5% have multiple injuries, as did Mr. Bowman (n=3). These injuries cooccur with alcohol use, binge drinking, other substance use, low grades, violence and antisocial behavior. They are particularly common among male athletes. Trauma to the head during adolescence has been shown to cause impairments in cognitive, social and behavioral development. Most studies find that greater deficits are observed right after the onset of the TBI. TBIs that occurred within twelve months were associated with poor academic performance.

"Concussion History and Cognitive Function in Large Cohort of Adolescent Athletes "American Journal Sports Medicine, 2018 Nov 46(113): 3262-70.

In a study of 5616 high school athletes, researchers found that adolescents suffering a concussion achieved lower scores on tests of multiple domains of cognitive functioning. The more recent the concussion, the worse the cognitive performance. Reduced cognitive performance appeared to persist for 1.5- 2 years after the concussion. Decreases in cognitive functioning were not large. The Initial effects of a concussion on cognitive function may last longer than generally thought.

4. Mr. Bowman was dealing with numerous legal stressors prior to his offense. He was charged with Possession of a Pistol during a traffic stop. Mr. Bowman reported he felt hopeless because the police officer told him he would serve five years. Mr. Bowman

reported the gun belonged to his cousin. Mr. Bowman stopped attending his probation appointments after this incident.

5. Mr. Bowman has spent 23 years in confinement. During this period of time, his brain completed maturation, he stopped drinking and using any illicit substances, and he has adapted to his incarceration.

6. Mr. Bowman's cognition was reassessed in 2022. His cognition remains stable. He has not had a decline in functioning. His achievement has increased. He has not sustained further head injuries. He denies use of alcohol in over 20 years. There is no evidence he has any kind of cognitive disorder that would progress over time and change his cognitive capacity to adapt to incarceration.

7. Despite research showing that younger persons with a family history are at higher risk for developing alcohol use disorder, Mr. Bowman denies drinking alcohol or using drugs. Review of his prison records do not indicate he has been suspected of substance abuse nor has he had any positive drug screens. The adolescent studies of substance abuse showed that the long-term effects were not substantial if alcohol use was stopped. Mr. Bowman's history is consistent with those findings.

8. Mr. Bowman has been a model death row inmate. He has not had any assaultive disciplinaries during his present incarceration. His only assaultive disciplinary occurred during his YOA sentence. Mr. Bowman did not initiate the fight, and his consequence was a two-week extension of his YOA sentence.

9. Mr. Bowman has not had any non-assaultive disciplinaries since 2016. He has been twice charged with damaging his toilet, with the last time being in 2016. He reported that during both instances, he was protesting conditions in the prison. Since that time, Mr. Bowman reports he uses nonaggressive methods of protest like hunger strikes when attention needs to be called to prison conditions.

10. Mr. Bowman is not mentally ill. He has the capacity to continue to adapt.

11. Mr. Bowman does not abuse alcohol or other substances.

12. Mr. Bowman is respected by staff and other inmates. He has been described as a calming influence. He has been described as a leader and has participated in Inmate Representation.

Donna S. Maddox M.D.

Donna S. Maddox, MD
Consulting Forensic Psychiatrist

Exhibit 20

Curriculum Vitae
DONNA SCHWARTZ MADDOX, M.D.

donnamaddoxmd@gmail.com

POSITIONS: Owner, Donna S. Maddox, MD LLC

Contract Forensic Psychiatrist
Department of Mental Health

Affiliate Professor of Psychiatry
Medical University of South Carolina
Department of Psychiatry and Behavioral Sciences

Affiliated Clinical Associate Professor of Psychiatry
University of South Carolina School of Medicine-Greenville
Department of Psychiatry

Professor of Psychiatry
Edward Via College of Osteopathic Medicine
Carolinas Campus

PROFESSIONAL LICENSURE:

South Carolina Medical License # 16574

EDUCATION:

1981 - 1985 B.A. Psychology
Furman University
Greenville, South Carolina

1985 - 1989 Doctor of Medicine
University of South Carolina School of Medicine
Columbia, South Carolina

BOARD CERTIFICATIONS:

Diplomate, Psychiatry, (Board Certification #40726), January 1995, recertified 7/2005- 12/2015
Added Qualifications in Forensic Psychiatry, July 1996 #471, recertified 7/2006-12/2016

POSTGRADUATE FELLOWSHIPS AND RESIDENCY POSITIONS:

1989 - 1993	Resident in General Psychiatry William S. Hall Psychiatric Institute Columbia, South Carolina
1993 - 1994	Fellowship in Forensic Psychiatry William S. Hall Psychiatric Institute Columbia, South Carolina

ACADEMIC POSITIONS/EMPLOYMENT/UNIVERSITY APPOINTMENTS:

8/2016-4/2018	Contract Psychiatrist Harris Psychiatric Hospital
8/2013-8/2016	Psychiatric Service Director(certified) Harris Psychiatric Hospital
7/2010-8/2013	Senior Psychiatrist Bryan Psychiatric Hospital
4/24/2013 to present	Clinical Professor of Forensic Psychiatry Medical University of South Carolina Department of Psychiatry and Behavioral Sciences
7/2010 to 2015	DMH Professor of Psychiatry University of South Carolina School of Medicine Department of Neuropsychiatry
7/2006 to 7/2010	Professor of Clinical Psychiatry Director, Forensic Psychiatry Services University of South Carolina School of Medicine Department of Neuropsychiatry and Behavioral Science 3555 Harden Street Extension, Suite 102 Columbia, South Carolina 29203 (803) 434-4698 (803) 434-2367 (fax)
	Consulting and Treating Forensic Psychiatrist South Carolina Department of Juvenile Justice
	Consulting and Treating Forensic Psychiatrist South Carolina Department of Corrections

11/98-6/2009	Consulting and Treating Forensic Psychiatrist Behavioral Disorders Treatment Program (Sexually Violent Predator Program: SC 44-48-110) South Carolina Department of Mental Health
6/1997- 7/2006	Associate Professor Director, Forensic Services Department of Neuropsychiatry University of South Carolina School of Medicine
1/2004-7/2004	Acting Assistant Director, Psychiatry Residency Program University of South Carolina School of Medicine Department of Neuropsychiatry and Behavioral Science
9/1995-5/1997	Forensic Residency Training Director University of South Carolina School of Medicine
7 /1996 – 6/1997	Psychiatrist C William S. Hall Psychiatric Institute Residential Treatment Director of NGRI Unit
1/1995 – 6/1996	Teaching Psychiatrist II William S. Hall Psychiatric Institute Outpatient Forensic Psychiatrist
1/1995 – 12/1997	Assistant Professor University of South Carolina School of Medicine Department of Neuropsychiatry
7/1994 –6/1995	Instructor University of South Carolina School of Medicine Department of Neuropsychiatry
7/1994 – 12/1994	Teaching Psychiatrist I William S. Hall Psychiatric Institute Inpatient and Outpatient Forensic Psychiatrist

MEDICAL STAFF APPOINTMENTS

Patrick B. Harris Psychiatric Hospital (current)
Bryan Psychiatric Hospital (current)

UNIVERSITY/ MEDICAL STAFF COMMITTEES:

2015-2016	Vice-President, Medical Staff Harris Psychiatric Hospital

2007-2010	Member, Appointments and Promotions Committee, USC
2002- 2009	Member, Alumni Committee, USC School of Medicine
1996- 2010	Member, Residency Selection Committee
1995- 2010	Member, Residency Training Committee
2002- 2003	Member, Search Committee, Chairman of Neuropsychiatry
2000-2001	Member, Committee on Women USC
1997	Member, Traditions Committee USCSM
1997	Member, Search Committee, Director Rehabilitation Counseling
1997	Physician Advisor, Environment of Care
1996	Member, Search Committee Chair of Department of Neuropsychiatry and Director of Hall Institute
1996	Member, Finance Committee, University Specialty Clinics
1994-1996	Member, Infection Control Committee
1993-1994	Member, Research Committee

HONORS AND AWARDS:

2017	Gold Humanism Award Greenville Hospital System
2016	Clinical Mentor Award, University of South Carolina School of Medicine, Greenville, South Carolina
2007	Outstanding Female Physician Mentor Award
2004-2005	Outstanding Forensic Teaching Award Presented by the USC SOM Forensic Fellowship Training Program
1992	Rappeport Scholarship in Forensic Psychiatry Presented by the American Academy of Psychiatry and the Law
1989	Neurology Award, School of Medicine
1985	Cum Laude Graduate, Furman University Phi Beta Kappa, Furman University Alpha Epsilon Delta, Furman University

MEMBERSHIPS AND OFFICES IN PROFESSIONAL ORGANIZATIONS:

2019-present	University of South Carolina Board of Visitors
2002-2009	American Board of Psychiatry and Neurology Forensic Certification Committee
1999-2009	American Board of Psychiatry and Neurology 1999-2010 Board Examiner
1997-2003	Group for the Advancement of Psychiatry (GAP), General Member 1999 Chair
1992- 2014	American Academy of Psychiatry and the Law (AAPL)

	1995-2000	Rappeport Committee (President appointed)
	1995-2000	Education Committee (President appointed)
	1998-2000	Program Committee (President appointed)
	1999	Program Chair
	1995-97	Mentor to Rappeport Fellow
1989-1998	American Psychiatric Association, General Member	
1989-1998	South Carolina Psychiatric Association	
	1995-1998	Federal Legislative Representative (President appointed)
	1995-1999	Executive Council
	1996-1998	Secretary-Treasurer
1997	NAMI Advisory Board Physician Representative	

PUBLICATIONS:

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Giorgi-Guarnieri D, Zonana HV, Schwartz-Watts DM. "Practice Guideline: Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense." Supplement to The Journal of the American Academy of Psychiatry and the Law 30:2, 2002.

Frierson R, Schwartz-Watts D, Malone T, Morgan D. "Capital Versus Noncapital Murderers" in revision The Journal of the American Academy of Psychiatry and the Law, 1998.

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Schwartz-Watts D, Morgan D, Barnes C. "Stalkers: The South Carolina Experience," The Journal

of the American Academy of Psychiatry and the Law,1997, 24:541-545.

Schwartz-Watts D, Montgomery L, Morgan D. "Seroprevalence of Human Immunodeficiency Virus Among Pre-Trial Detainees," The Bulletin of the American Academy of Psychiatry and the Law, 1995, 23:285-289.

POSTERS:

Internet Chat Rooms: Who Solicits Children? R. Gregg Dwyer, MD, Ed. D, Donna Schwartz-Watts MD , William Burke, PhD, American Academy of Psychiatry and the Law 39th Annual Meeting, Seattle, WA October , 2008

PRESENTATIONS:

"Death Penalty and Competence to Be Executed" Medical University of South Carolina Department of Forensics, March 10, 2021

"Substance Abuse and Mental Health," South Carolina House of Representatives CLE Webinar, January 28, 2021.

"Mental Health and Substance Abuse", Attorney General's Ethics and Mental Health/Substance Abuse CLE Webinar, December 11, 2020

"What Experts Want Lawyers to Know" Columbia 2020 SC Bar Convention, Criminal Law part I, Columbia Metropolitan Convention Center, January 24, 2020

"Attorneys and Stress: Reactions and Healthy Ethical Coping**"** Attorney General's Ethics and Mental Health/Substance Abuse CLE, Blatt Building, Columbia SC December 13, 2019

"Handling Pressures of Judging", South Carolina Judicial Conference, Columbia, South Carolina, September 17, 2019.

"Mass Murderers", South Carolina Circuit Judges Conference, Spartanburg, South Carolina, May 2, 2019.

"PPG Testing in South Carolina Courts," South Carolina Circuit Court Judges Conference, Spartanburg South Carolina, May 2, 2019.

"Attorneys and Stress: Reactions and Healthy Ethical Coping**"** Attorney General's Ethics and Mental Health/Substance Abuse CLE, Blatt Building, Columbia SC December 7, 2018

"Mass Murderers and Mental Illness" Southeastern Symposium Mental Health, Greenville, South Carolina, May 18, 2018

"How To Make Your Expert Shine" Deep South Capital Defense Conference, Bay St. Louis Mississippi, February 7, 2018

"Communicating with Clients: Deep South Capital Defense Conference, Bat St. Louis , Mississippi, February 7, 2018

"Truths and Myths About Mass Murder" Department of Mental Health Day Long CME, Columbia South Carolina September 5, 2017

"How To Make Your Expert Shine" South Carolina Attorney General CLE, January 20, 2017 Columbia, SC

"Expert Testimony" Lecture to Medical University of South Carolina Forensic Residents, Charleston, SC 1/13/16

"Death Penalty and South Carolina" Lecture to Medical University of South Carolina Forensic Residents, Charleston, South Carolina, February 6, 2013

"Autistic Spectrum Disorders; What Capital Lawyers Should Know." Death Penalty 2013, Sheraton Four Seasons, Greensboro January 25, 2013

"Predators Among Us" University of South Carolina 2012 Mini Med School, October 2, 2012, Columbia, South Carolina

"How Death is Different-Using ABA Guidelines to Meet the Standard of Care in Death Penalty Cases and Social History Investigations: The team Approach" with Joe VonKallist, Capital Case Workshop, September 19, 2012, Wilmington, North Carolina

"Protecting Mental Health" South Carolina Attorney General's Continuing Legal Education Ethics Seminar, Blatt Building, Columbia, SC 12/2/11

"Autistic Spectrum Disorders and the Legal System ", DMH Annual CME, William S Hall Psychiatric Institute 9/11

"Issues of Mental Competency" South Carolina Circuit Court Judges Conference, Spartanburg, South Carolina, May 4-6, 2011

Stalking in the New Millennium": Department of Mental Health Day Long CME, Columbia SC, October 2009

"Internet Predators": South Carolina Psychiatric Association Annual Meeting, Myrtle Beach, South Carolina, 1/2009

"Internet Predators": Panel Speaker, South Carolina Bar Association Annual Meeting, Myrtle Beach South Carolina, 1/2009

Internet Predators: ICAC Quarterly Meeting, Columbia, South Carolina 11/21/2008

Project Safe Childhood, Advanced Online Child Exploitation Seminar, National Advocacy Center Columbia, SC, July 29, 2008

"Violent Crimes and the Commitment of Sexually Violent Predators, MUSC Judges and Attorneys Substance Abuse and Ethics Seminar, Charleston, South Carolina, December 7, 2007

"Autistic Spectrum Disorders and Corrections" South Carolina Department of Corrections Mental Health Seminar, Columbia, South Carolina, December, 2007

"Pitfalls in Sex offender Commitment Hearings" Panel Speaker, American Academy of Psychiatry and the Law 38th Annual meeting, Miami, Florida, October 22, 2007

"Treating the Untreatable" Panel Speaker, American Academy of Psychiatry and the Law 38th Annual Meeting, Miami, Florida, October 19, 2007

"Risk Assessment in General Psychiatry: Department of Mental Health Annual Day Long CME, Columbia, SC September 21, 2007

"Mitigation in Noncapital Cases" SC Public Defender's Conference, Myrtle Beach, SC October 2007.

"Nuts and Bolts of Sexually Violent Predator Proceedings" SC Bar CLE, Columbia, South Carolina July 27, 2007

University of South Carolina School of Medicine Founder's Day Speaker for Woman in Medicine, Columbia, South Carolina, April 2007.

"Autistic Spectrum Disorders and Mitigation," Washington DC March 2007

"Sex Crimes and their Aftermath II" Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC, January 25, 2007

"Psychiatry for the Brilliant Fact Finders" Invited Speaker, South Carolina Judges Conference, Greenville, SC, May 12, 2006.

"Sex Crimes and their Aftermath" Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC January 27, 2006.

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, Atlanta Georgia , June 4-5, 2005

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, Atlanta Georgia , June 5-6, 2004

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice

National Institute of Trial Advocacy, New York, New York, June 20-21,2003

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York. June 20-22,2002.

South Carolina Probation, Paroles and Pardons Annual Conference. "A State of Mind". Myrtle Beach, SC. November 11, 2002.

American Academy of Psychiatry and the Law, "Difficult Case? Consult your Colleagues." Newport Beach, California. October 26, 2002

South Carolina Public Defender's Conference, "Issues and Concerns Regarding the Sexually Violent Predator Statue" Litchfield Beach, South Carolina, September 30, 2002

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York, June 28-30-2002.

American Academy of Psychiatry and the Law, "Death Penalty" Boston, MA, October 28, 2001

American Academy of Psychiatry and the Law, "Ask the Expert" and "The Difficult Case" Panel Discussions. Boston, MA, October 28, 2001

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York, June 14-17-2001.

Annual Capital Defense Training Seminar, "The Importance of Timing in the Presentation of Your Client's Story: Frontloading Mitigation" with John Blum, Attorney, Jekyll Island, Georgia, February 9, 2001

University of Texas, Department of Psychiatry Grand Rounds "Profile of a Stalker" San Antonio, Texas, December 19, 2000

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Death Penalty Evaluations," December 18, 2000.

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Texas Sexually Violent Predator Statute," December 18, 2000

American Academy of Psychiatry and the Law, " Juveniles Who Carry Weapons on School Grounds" Baltimore, Maryland, October 15, 1999

American Academy of Forensic Science, Workshop Presenter, San Francisco, 1998 "Classification and Typology of Stalkers."

Kansas City, Western Missouri Forensic Department, 1997 "Evaluation of Stalking."

University of South Carolina School of Medicine Women's Month Featured Presenter, 1997 "Stalkers: The South Carolina Experience."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Psychotic versus Nonpsychotic Stalkers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Harassing Telephone Callers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 Panel on Maintaining Competence sponsored by Education Committee

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Violent Versus Nonviolent Stalkers",

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Capital Versus Noncapital Murderers"

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Treatment of Insanity Acquittees Across the United States."

William S. Hall Psychiatric Institute Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

Georgia Regional Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

American Academy of Psychiatry and the Law, Seattle, Washington, 1995 "Stalkers: The South Carolina Experience"

South Carolina Psychiatric Association, Hilton Head Symposium, 1995 "What General Psychiatrists Need to Know About Forensic Psychiatry."

American Academy of Psychiatry and the Law Annual Conference, San Antonio, Texas 1993 "Seroprevalence of HIV Among Inpatient Pre-trial Detainees"

American Medical Association, North Carolina 1990 "Tertiary Metastases Presenting As Panhypopituitarism"

Grants:

Internet Chat Room Solicitation of Children: A Study of Psychosocial and Criminal Justice Factors as They Relate to Public Safety Risk; American Academy of Psychiatry and the Law Institute for Education and Research (AIER) Grant; Principal Investigator: RG Dwyer; Co-investigators: D DeHart, DM Schwartz-Watts, W Burke & R Moran; 2009 - 2010

(Revised 12/16/24)

Exhibit 21

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

Applied Psychological Services, LLC
1941 Savage Rd., Ste. 400A
Charleston, South Carolina, 29407
(843) 637-5729-Phone; (843) 410-2802-Fax

PRISON ADAPTABILITY / FUTURE DANGEROUSNESS EVALUATION

Examinee: Bowman, Marion
Date of Birth / SCDC#:: [redacted]
Dates of Evaluation: February 3, 2023; and March 17, 2023
Examiner: Susan C. Knight, Ph.D., ABPP

IDENTIFYING DATA: Mr. Marion Bowman, Jr., is a 42-year-old, African American male, incarcerated in SCDC for Murder and Arson, 3rd Degree. His charges originated from Dorchester County, on February 16, 2001, when Mr. Bowman was 20 years old. After a trial by jury in May 2002, he was found guilty and sentenced to death on the Murder charge, and 10 years on the charge of Arson. Thus, Mr. Bowman has been incarcerated in SCDC for twenty-one years. His attorneys, Teresa Norris, Esq., and Lindsey Vann, Esq., requested an evaluation of Mr. Bowman's risk of 'future dangerousness' or adaptability, if transferred from death row to SCDC's general population housing. In response, the examiner assessed pertinent historical factors; psychosocial and disciplinary functioning over his incarceration; mental health/medical status; and risk for future violence within a correctional setting.

SUMMARY OPINION: Based on clinical interviews with Mr. Bowman; interviews with family members and extrafamilial individuals; consultation with evaluating and treating professionals; application of a violence risk assessment measure; utilization of relevant research on institutional violence; and review of legal, academic, psychosocial, medical and correctional records; the following was found as summarized.

Circumstances of the Homicide: The homicide involved the shooting death of an adult female, when Mr. Bowman was 20 years old. Given his age, it occurred within a period of neurobiological immaturity; and was preceded by months of very heavy alcohol consumption; family dysfunction, and lack of any prosocial structure. Factors contributory to the homicide are no longer present (e.g., immaturity, intoxication) and/or are not accessible (e.g., firearm).

Course of Incarceration: Mr. Bowman has had very few disciplinaries, all of minimal severity. He has a remote history of one minor assaultive infraction, at age 17, involving a fight with another inmate. He has kept very strong interpersonal relationships with family and others, and actively assists other inmates. He has heavily involved himself in spiritual and religious activities, through self-study of courses, and by meeting regularly with prison ministry staff.

Mental Health/Medical: Mr. Bowman has no history of mental illness. He is of average intelligence, with no cognitive disorder; and no personality disorder. Medically, he underwent emergent surgery for a laminectomy and microdiscectomy, in September 2019, with persistent numbness, pain and difficulty ambulating. He takes medication for chronic radiculopathy, hypothyroidism, and hyperlipidemia.

Violence Risk Assessment: Mr. Bowman is of mature age; is clinically stable; has no substance use or violence over his incarceration; has excellent coping and interpersonal skills; and is heavily involved in prosocial pursuits. Such factors, in addition to an empirically validated risk measure, and assessment of known correlates to prison violence, indicate Mr. Bowman's risk of violence within a correctional setting is very low, with excellent adaptability to his environment.

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

Psychosocial, Legal and Incarceration Records

1) Psychosocial records for Mr. Bowman's family, to include medical, social service, employment, and criminal, various dates;
2) Psychosocial records for Mr. Bowman, including birth, medical, academic, social service, youth treatment, legal, pre-trial correctional, marriage and employment, 1980 to 2002;
3) Select discovery documents and trial testimony, PCR Affidavits, SCDMH evaluation and test data [2001], neuropsychological raw test data [B. West, PhD., 2002], psychosocial assessment [J. Yungman, 2002], and cognitive testing [S. Asquith, 2002];
4) All prior legal/court decisions pertaining to Mr. Bowman's case;
5) Mr. Bowman's entire SCDC file from March 1998 to February 2023, to include his central record, warden's jacket, criminal history, legal documents, and medical records;
6) Various certificates and letters of accomplishment for Mr. Bowman, during incarceration;
7) Handwritten poems and writings from Mr. Bowman, throughout incarceration;
8) Fact Chronology of Listed Sources, by K. Fuhrmeister, MA, March 8, 2023;
9) Letter of neuropsychological testing results, by J. James, PhD., ABPP, April 12, 2023;
10) Report of Adolescent Development, by E. Cauffman, PhD., dated June 4, 2023;
11) Psychiatric Report by Donna Maddox, MD, dated June 5, 2023;

Interviews, Memorandum & Consultations

12) Clinical Interview with Marion Bowman, three hours, forty minutes, February 3, 2023;
13) Interview memo with former SCDC officer Darryl McGhee, March 8, 2023;
14) Interview memo with former SCDC Warden Stan Burtt, from March 9, 2023;
15) Interview memo with former SCDC officer Eddie Berry [deceased], March 14, 2023;
16) Clinical Interview with Marion Bowman, four hours, on March 17, 2023;
17) Interview memo with former SCDC Major Fred Thompson, from April 14, 2023;
18) Interview memo with former SCDC Asst. Warden, V. Jackson, April 15 & 17, 2023;
19) Interview [phone] with Mr. Bowman's daughter, Marissa Bowman, April 29, 2023;
20) Interview [phone] with Mr. Bowman's mother, Denise Bowman, April 29, 2023;
21) Interview [phone] with Larry Tyree, ordained minister, May 3, 2023;
22) Interview [phone] with former Associate Warden Ralph Hunter, May 3, 2023;
23) Interview [phone] with Ernest Riddle, former death row inmate, May 4, 2023;
24) Interview [phone] with Mr. Bowman's father, Marion Bowman, Sr., May 4, 2023;
25) Interview [phone] with Bob McAlister, death row minister, May 4, 2023;
26) Interview [phone] with Gordon Manning, former death row minister, May 4, 2023;
27) Interview [virtual] with Robert Ellis, MD, death row psychiatrist, May 5, 2023;
28) Consultation [virtual] with J. James, PhD., evaluating neuropsychologist, May 5, 2023;
29) Consultation with D. Maddox, MD, evaluating forensic psychiatrist, May 5, 2023;
30) Interview [virtual] David Chudd, RN, SCDC nursing supervisor, May 9, 2023;
31) Interview [phone] with Mr. Bowman's maternal cousin, Quanisha Clark, June 3, 2023;

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to the evaluation, Mr. Bowman was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any information he provided would not be confidential and may be used to prepare a report for his attorneys, which, at his attorneys' discretion, may be distributed to third parties. He was also informed that treatment would not be provided. Mr. Bowman endorsed an understanding the parameters of the evaluation and provided his consent to proceed.

PERTINENT PSYCHOSOCIAL HISTORY: Mr. Bowman was born and raised in Branchville, South Carolina, with two sisters. His mother married at 15, and his father was physically abusive to his mother. They separated when Mr. Bowman was 1 years old, after which his mother was a single parent, as his father abandoned all parenting responsibilities. The family resided in poverty, subsisting on welfare. At age 8, his mother's boyfriend became involved in his life, as a stepfather figure, until age 17. When his stepfather left his mother, Mr. Bowman lost structure and authoritative guidance, at a crucial age during adolescence. Further, his mother had severe rheumatoid arthritis throughout his childhood, limiting her work and movements. Her illness placed Mr. Bowman in a caretaking role from a very young age, acting as a parent to his mother and siblings. He "cooked, cleaned, put food in the house, cut grass for cash." He discontinued schooling in the 10th grade due to poor performance. At age 19, in 1999, he was married, as it was "important to have a family." He has one child from this union, with his daughter born six months after his arrest. Mr. Bowman was arrested on February 16, 2001.

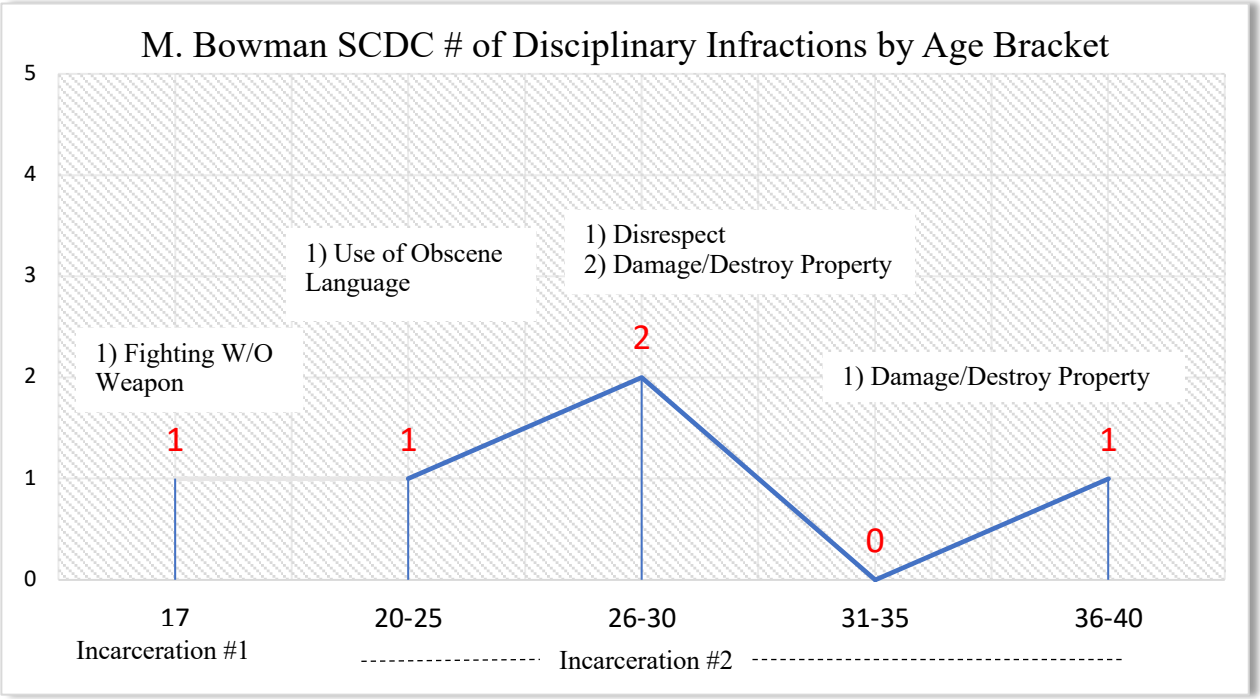
COURSE OF INCARCERATION: At age 21, on May 23, 2002, Mr. Bowman began his sentence in SCDC. He was placed on death row, where he presently remains. He was initially housed at Lieber CI, until February 2007, when he was transferred to administrative segregation [MSU] at Kirkland CI during the course of an investigation. He was cleared, and returned to Lieber CI in June 2007. In September 2017, he transferred to Kirkland when death row was relocated; and in July 2019, was transferred to Broad River CI when death row was again relocated, to its present location.

When Mr. Bowman came to death row in 2002, he "was the youngest person in the building, I was a scared kid, I thought I would be dead in 45 days." He experienced a "litany of emotion" which eventually gave way to "anger." He was "angry, mad, had bouts of self-pity." He would "hit the wall and my hand would swell up, cool off and then hit the wall again." After several years, the "other guys started encouraging me and I stopped punching walls." He realized, "I'm not helpless, I have hope, and God has a hand in it…" He reflects back to his earlier years on death row, stating, "some of the guys really helped me, and the positive they instilled in me, others are now withdrawing [positivity]," as he now helps the newcomers. He stated, "now I'm able to help the next group of guys, be a sounding board, offer encouragement." Around 2008, he "had an epiphany, I need to change, I was sitting in a shower cell at Lieber, and some sort of peace came. I still have ups and downs, but I'm able to get through." He stated, "I'm a better person for what I've been through, I'm glad for all the people who have invested in me and helped me see myself in a positive way."

Of note, from 2008 to 2020, he served on the Inmate Representative Council [IRC] as an "Inmate Rep." In this role, he served as the inmate liaison to the administration, bringing concerns, resolutions and ideas to the administration on behalf of the death row inmates. He "met in person with the warden or administration" and spoke with the other Inmate Reps. He "didn't sign up for it in 2021," and therefore, voluntarily relinquished this role to someone else, stating, "it's time for somebody else." He has also undertaken "six or seven hunger strikes" over his incarceration as a means of "peaceful protest" regarding treatment, conditions or other issues. He reasons that "I'm not harming anyone else by doing it" and it has worked to open a line of communication with the administration, which is the desired goal. He "does not encourage others to join," but "will advocate for my community." Of these protests, he stated, "I adapt to my living situation, because that's what I do, I'm a human, respect for respect."

When asked how he has matured past the 20 year-old who was arrested, he stated, "my thinking process has changed, even when I'm right, I no longer need to be right, it doesn't matter, don't need others' validation, I've mellowed." He has also vowed to "tell people I love them, I try to end my calls that way, with 'I love you,' or 'peace, love and respect.' I'm more appreciative, and very open to people. I try to take lessons from everything I've said or done. I start the day, 'how can I be a better person today,' when confronted with issues or questions, or helping others."

Disciplinary Infractions: Per his February 2023 SCDC 'Record Summary,' Mr. Bowman has "no detainers;" "no escape history;" "no criminal charges while in custody;" and "no assaultive disciplinaries." During his former incarceration, he had one fight; and during the present, he has incurred five 'non-assaultive disciplinaries,' with one dropped, as reflected by the chart below.



His disciplinary record reflects minimal infractions. During his YOA SHOCK sentence, at **age 17**, in **April 1998**, Mr. Bowman was charged with Fighting without a Weapon. Per the incident report, officers observed another inmate "push inmate Bowman" which started the fight. Officers pulled them apart, and "the fight came to an end" with no injuries. During the present evaluation, Mr. Bowman stated this other inmate "slapped me and we got into a fight," which has been his "only fight" at SCDC. He "doesn't solve problems by fighting." *[A corrections expert testified at trial, that "on a scale of 1 to 10, this [fight] barely makes it to a 1"].*[1]

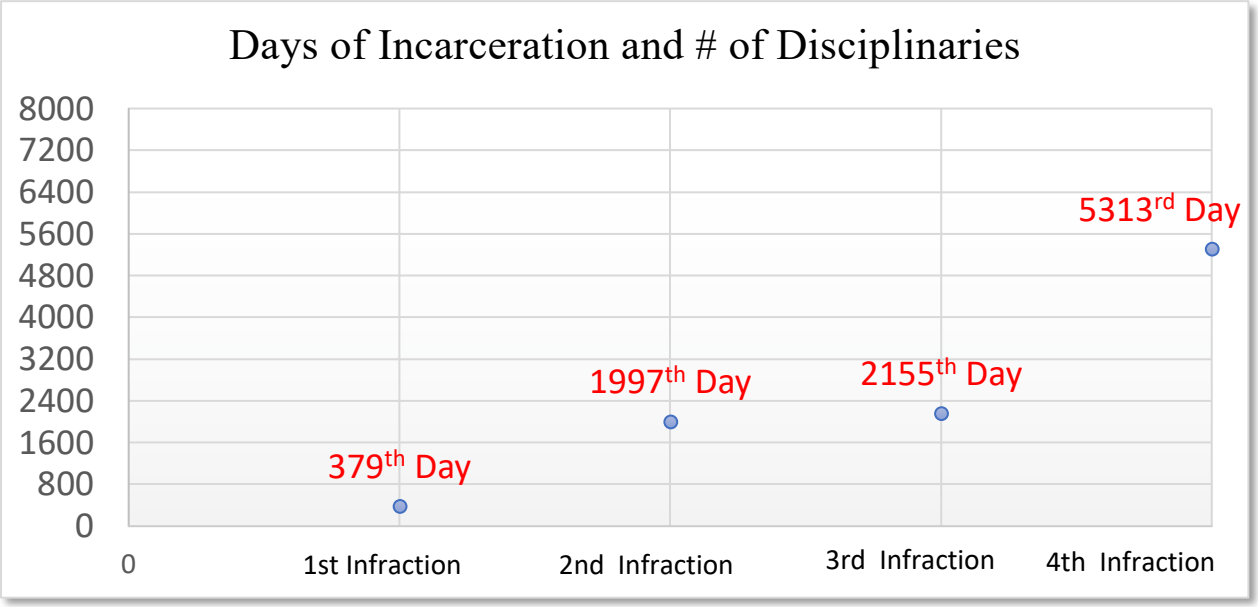
At **age 23**, in **2003**, he was found guilty of 'Use of Obscene Language' during an interaction with an officer, and given an "oral reprimand." At **age 27**, in **2007**, he incurred an infraction of Disrespect. There is no documentation in SCDC records as to the details, and Mr. Bowman did not recall this incident. Of note, this infraction is not classified as either a Major or Minor infraction, and instead designated as 'Other,' which is the least serious classification.

[1] *Bowman v. State*, Testimony of James E. Aiken, Vol. 11, p. 4868.

At **age 27**, in **2008**, Mr. Bowman incurred an infraction of Damage, Loss, Destruction or Defacing Property valued at $100 or more, classified as 'Major.' Per the incident report, Mr. Bowman, along with two other inmates "destroyed their toilets." The only sanction issued was restitution. *[Mr. Bowman explained that inmates were not receiving rec due to staffing shortages, and they planned a peaceful protest. Instead, officers "stripped us and took all of our belongings" and did not listen to their side. Several months after this incident, Mr. Bowman "asked to be an Inmate Rep" so he would be in a better position to solve problems with staff].*

At **age 36**, in **2016**, Mr. Bowman incurred an infraction of Damage, Loss, Destruction or Defacing Property valued at $100 or more, which was classified as 'Major.' Per the incident report, he "broke his toilet due to an incident where he could not receive his legal mail." *[Mr. Bowman was awaiting an important legal reply at the time].* The sanction imposed was "window locked for several days" and restitution for the toilet. *[Mr. Bowman stated staff was opening his legal mail, and reading it, which bothered him. This also occurred at a time when he "had just lost at a hearing, or an appeal, I was feeling bad." He regrets this action, and realizes it did not solve any issues. He paid the restitution promptly].*

In sum, Mr. Bowman has been incarcerated almost 8000 days during his present incarceration, with only four 'convicted' infractions. To illustrate the infrequency of these incidents via the chart below, each infraction is tied to the numbered day of his incarceration, with thousands of days in between infractions.



Unfounded Allegations: Of note, SCDC records indicate that in January 2007, officials received an anonymous tip via telephone that Mr. Bowman had devised an escape plan, along with several other death row inmates. The caller stated he/she "overheard a conversation in a bar" regarding the escape plan. The "caller" reported "cellphones were coming in through family members," presumably of the implicated inmates, to plan the escape. Location of the cellphones was provided, however, no cell phone was ever found in or near Mr. Bowman's possession. The "caller" also reported that the implicated inmates planned to use "wire cutters," however, no wire cutters were ever found despite cell searches. Thus, no details of the plan were substantiated.

However, due to the anonymous call, on January 9, 2007, a cell search was conducted of Mr. Bowman's cell, and a "homemade ski mask" was found, with "holes for eyes, nose and mouth." He did not incur a charge for having this item. Due to the ongoing investigation, Mr. Bowman was transferred to Kirkland's MSU, and returned to death row in June 2007, after he was cleared, with no charges or infractions.

During the present evaluation, Mr. Bowman emphatically denied any involvement in an escape plan. He recalled the warden at the time informed him that the "investigation was fruitless." He realized another inmate had fabricated the report, falsely implicating him and several others, and was "upset." However, "at some point, you can't hold onto anger, and I'm not a bully." He did not want to settle the issue with an altercation, and eventually, "we became friends in the end." He acknowledged having the clothing item mistaken for a ski mask because "we went to rec early in the morning and it was cold outside, we had to sit outside in the cold, and another inmate made it for me out of a thermal top, and gave it to me." He received the clothing item "in the winter of 2002," which was his first winter at SCDC. At some point, he "just threw it in my box with my clothes and forgot about it" until it was found via the cell search in 2007.

Collateral Interview [Former Death Row Inmate]: Mr. Ernest Riddle, a former death row inmate, now released, served on death row with Mr. Bowman, from 2002 to 2006. Thus, he was contacted to ask about the "ski mask" found in Mr. Bowman's property during the 2007 investigation. Mr. Riddle recalled Mr. Bowman wearing a "toboggan hat" with "holes in it." He recalled Mr. Bowman wore this in the winter time, and when playing basketball, to keep his dreads from interfering with his vision. *[At that time, Mr. Bowman had long hair or 'dreads.']* Mr. Riddle was asked about the particular inmate Mr. Bowman stated made the hat for him. Mr. Riddle recalled this other inmate, and that he was known for creating clothing items, such as sewing pairs of gloves together for more warmth, and altering "sweatpants." He agreed this other inmate was 'crafty' with materials, and making items for other inmates. He also knew inmates to "sew together two hats for more warmth" given their thinness. When asked if a thermal top would have been available for use to make the hat, as reported by Mr. Bowman, he said "yes, off the canteen." Thus, Mr. Riddle was able to verify Mr. Bowman's report, that another inmate likely made a hat with holes in it; that it would have resembled a ski mask of sorts, in a readily available material; and that Mr. Bowman was known to wear this item for warmth on the row.

- SCDC officers familiar with Mr. Bowman's conduct were also contacted.

Officer Interview: Former Associate Warden Ralph Hunter worked at SCDC from 1995 to 2011, overseeing "max and death row" at Lieber CI. He recalled Mr. Bowman was a "dorm worker" in that he was allowed out of his cell. This was a "privilege," and reserved for inmates who were trusted by staff. AW Hunter also recalled Mr. Bowman was on the Inmate Representative Council [IRC]. Inmates on the IRC "brought needs to the warden and helped disseminate information to the inmates." He explained that GP inmates "would run for the position, but we didn't have any from max or death row at the time." Therefore, AW Hunter "picked a couple of inmates," including Mr. Bowman. In choosing Mr. Bowman, he "looked for someone who is non-confrontational, who could ask questions in a direct, but non-confrontational way. And Marion was very, very appropriate with his questions, getting information to people, pretty articulate and had a good way of presenting himself." In his role with IRC, AW Hunter stated Mr. Bowman was "pretty instrumental in directing the change we were doing."

AW Hunter also taught "character classes" on the row for some time, and Mr. Bowman was "big into it." He consulted Mr. Bowman as to "what they [other inmates] wanted to work on." He also recalled Mr. Bowman "would volunteer [for activities] and get out of his room." Overall, he described Mr. Bowman as a "non-confrontational type, easy going, articulate" and good-natured, who worked well with both inmates and staff alike. He did not recall any type of behavior issues or aggression from Mr. Bowman, "no signs of that." He did not recall any escape issue associated with Mr. Bowman. He believed Mr. Bowman had "adjusted well" to prison without significant issue. Warden Hunter stated that "at the time I knew him, he would have been appropriate for general population, he wouldn't have any problems in GP at all, none, he would be a good candidate for GP."

Officer Interview Memos: Former SCDC Officer Eddie Berry worked at SCDC from 2009 to 2014, spending two of those years on death row. He recalled Mr. Bowman well, stating he was "no trouble," and did not remember any rule violations or disciplinary infractions associated with Mr. Bowman. He described Mr. Bowman as "very social," having positive relationships with the other inmates, and with the officers. He recalled Mr. Bowman speaking about the Bible, as well as sports, and that he would "laugh and joke" in a good natured manner during their contacts.

Former SCDC Warden Stan Burtt retired from SCDC in 2008. He "remembered that Marion was no trouble" and had no "memory" about an escape attempt. Former SCDC Deputy Warden Vaughn Jackson recalled Mr. Bowman as a "model inmate," with good behavior. He also recalled Mr. Bowman as an "inmate rep" and a "leader on death row" who did a good job, and who would "probably do fine in general population." Former SCDC Major Fred Thompson worked at SCDC from 1970 to 2017. He recalled Mr. Bowman "didn't give him any trouble." He did not recall any escape attempt from 2007, and did not recall Mr. Bowman associated with any escape attempt. He believes Mr. Bowman would do "fine" in general population. Former SCDC Lt. Darryl McGhee retired in 2018, and recalled Mr. Bowman as "nice and quiet" who was "no trouble," and "followed the rules and got along with everyone."

Mental Health: Mr. Bowman has not required mental health treatment while incarcerated in SCDC, and has no history of pre-incarceration mental health treatment. He has not been diagnosed with a mental disorder, has never taken psychiatric medication, and has no history of psychiatric hospitalization. He is not presently under mental health care.

Consultations: Both the chief psychiatrist for death row, and the evaluating forensic psychiatrist, confirmed that Mr. Bowman is clinically stable, not in need of psychiatric medication, and has no diagnosis of mental disorder.

Medical: On September 1, 2019, Mr. Bowman was emergently hospitalized due to severe back pain and difficulty urinating. He required immediate surgery, and underwent a decompressive lumbar laminectomy L4-5, with posterior microdiscectomy, L4-5. A catheter was placed for urinary retention. He was discharged on September 11, 2019, to SCDC's infirmary, where he remained until September 12, 2019, before returning to death row. He had multiple follow-up appointments with neurosurgery, and urology. At present, he has recovered mobile function, with tolerable pain. He experiences "some back pain…numbness and tingling in my feet, sometimes nerve pain, sciatica, but I'm able to walk some, try to move and stretch." He also has a "thyroid issue" and is in need of a repeat colonoscopy due to high risk factors.

As of the examiner's last visit in March 2023, he reported taking the following medications: Cymbalta [duloxetine] 30 mg, for chronic neuropathy; atorvastatin, 20 mg, for high cholesterol; and Synthroid [levothyroxine] 175 mcg, for hypothyroidism. Of note, SCDC records indicate at least nine 'outside' transports in recent years without issue, stemming from 2019 to 2022, including to the hospital, neurologist, urologist, and dentist.

Substance Use: Mr. Bowman drank heavily as a teenager, consuming malt liquor and gin daily. He infrequently used marijuana, as his only illicit substance. He reported no use of alcohol or drugs during his incarceration, with his last use of both prior to his arrest in 2001. SCDC records support his report, as there is no documentation of suspected or actual substance use in his records. Thus, his last use of any illicit substance or alcohol was 22 years ago.

Familial/Interpersonal Functioning: Mr. Bowman keeps very close relationships, and frequent contact, with family members and prior attorneys, stating "relationships are very important to me." He is particularly close with his daughter, now age 21, who was born during his current incarceration. He also keeps in close contact with his mother, his cousin Quanisha Clark, Quanisha's mother, Lena 'Cookie' Clark, and his father, along with various other relatives and friends. Additionally, he keeps close interpersonal relationships on the unit. He serves as a "sounding board" and "vault" for others to confide in, and "will get a smile out of you, love to laugh, poke at people and laugh at myself." He makes an extra effort to connect with inmates that are not well-liked by the others. He reported having a "rapport" with the staff, including officers, the psychiatrist, nursing staff, and unit counselor.

Collateral Interview [Daughter]: His daughter, Marissa Bowman, resides in Branchville, South Carolina. She graduated high school in 2020, and presently works full time as a cashier. She is pregnant with her first child, a daughter, due in August 2023. She has visited Mr. Bowman since she was "an arm baby, they told me he used to hold me," when contact visits were still allowed. However, she has "never been able to give him a hug" as rules changed when she was very young. She feels "sad to never touch dad or hug him." She can only "can hear his loud mouth through the glass," which was her affectionate way of teasing Mr. Bowman. Her first vivid memories are of "visiting him a lot in the 3rd grade, and we still go, me and Granny [Mr. Bowman's mother]." When death row was housed at Lieber, she saw him more frequently, but BRCI is farther away, which has reduced the frequency of visits. She "didn't get to see him during COVID," which was difficult. Now that COVID has lifted, she has returned to in person visits, last visiting him at a recent "cook-out, me and Granny went…" She has another visit planned in May.

She described her father as "outgoing, sweet, loving, caring, honest, he will give you his honest opinion." During her childhood, Mr. Bowman, "made sure we had Christmas every year, gave our names to the Angel Tree, he does try…"When asked what she and Mr. Bowman discuss in their daily phone calls, she stated, "school, he's real big on school, big on me getting my education, wants me to go to college, he keeps me on the right path." He "tells me to stay out of trouble, stay away from people who are no good…we talk about a lot of stuff, he makes sure I'm alright with my mom, she has brain cancer, and he tells me not to look at every situation as a negative situation." She has a "great bond with dad, even though he's in prison, we got a bond, he's spiritually here, virtually, I feel real close to him…when I get depressed and upset and he talks to me, he calls to make sure I'm not depressed."

He has also "sent me a Bible, helps me study the Bible, sent me a Bible with his name on it, put little notes in there. He is very spiritual, and he's an active dad, he's just not here physically, but he's active, I really appreciate him and love him very much." She noted he "loves Psalms, and he will tell me to see the positive, that everything is a brick, step up on it, and learn."

She noted Mr. Bowman is very excited about her baby, and that he has spoken with the father of her child, "had a virtual visit with him." Marissa plans to take her baby to see him, and is already planning to put the child's name on his SCDC visitation list "as soon as I can." She "wants dad to be part of her life." She noted "my relationship with my dad is very important, I appreciate him, I worry about him, I will always love him, no matter how the world looks at him."

Collateral Interview [Mother]: Mr. Bowman's mother, Denise Bowman, also keeps in frequent contact. She is 60 years old, retired, and lives in Branchville, South Carolina. She is very close to her granddaughter [Marissa], Mr. Bowman's daughter. His mother stated that when Mr. Bowman was at Lieber, she "would go every weekend if I could…" When the row moved to BRCI, the distance made it more difficult, but she still visits with regularity, last visiting a month ago. She stated "he calls me every morning to check on me, he's supportive, a backbone." During their calls, "he prays and tells me I'm not going crazy, he's always telling me scriptures to read, quotes them from memory…he's an important part of my life, even though he's in prison, I miss my baby." *[Ms. Bowman was crying very heavily at this point].* She also noted Mr. Bowman "is always drawing and sending pictures to us, positive pictures, he's more into it now than before." She noted Mr. Bowman "wanted Marissa to finish school and be a nurse, before she had a baby, but he's supportive, and excited, he's always talking about the baby."

Collateral Interview [Father]: Mr. Bowman's father, Marion Bowman, Sr., is 66 years old and resides in Branchville, South Carolina. He speaks with Mr. Bowman at least twice weekly, and also receives cards and drawings from Mr. Bowman. He has visited in the past, but finds the in-person prison visits too emotionally difficult. During their phone calls, they "talk about the old times, the fishing we used to do, and spiritual stuff, he's very into the church, and he always has some good advice." His father believes Mr. Bowman has "changed tremendously" since his arrest at age 20, "he can really look at himself now, inside and out, now knows how to walk the right path, very much more mature now, in his conversations, lives by the right way." He mentioned Mr. Bowman was very excited about his grandchild, and "plans to help all he can." Of their calls, his father stated, they "open me up, make me emotional, he encourages me."

Collateral Interview [Cousin]: Mr. Bowman's maternal cousin, Quanisha Clark, is 26 years old, and resides in Florence, South Carolina. She has had a relationship with Mr. Bowman for the past four years. They speak multiple times per day, and she visits at least twice monthly. As a person, she described him as "very caring, gentle, attentive to everything and everybody, observant and supportive." He is her "best friend, we depend on each other to get through the day." Ms. Clark struggles with "anxiety around people" and Mr. Bowman "definitely helps me manage my anxiety to stay calm, to breathe, he's reassuring, and positive." Mr. Bowman also "pushes me to be my best" in terms of her life goals, and career. Ms. Clark described Mr. Bowman's "faith" as having grown "stronger" over the years. He "believes in God very, very strongly and we talk about that, read scriptures with each other, pray." Overall, she described their relationship as "very special, and unique, because we never met before he was locked up." If he was not in her life, "I would feel empty, he's my best friend, part of my daily routine." She also noted he is "very active" in his daughter's life, and is excited for his granddaughter's birth.

Spiritual: In June 2005, SCDC records note Mr. Bowman submitted a form changing his religious preference to Rastafarian. In explanation, he stated, "I believe in Jesus Christ, our Lord and Savior…I wake up and give thanks to God to see another day." He does not eat pork, or cut his hair unless per policy. He "wants to be in image of my Savior." He "reads Psalms" in particular, and "uses prayer to lean on, to think to myself, 'it's just a moment, it will pass, it helps me cope on a day to day basis, I use my faith on a day to day basis." He recited Psalm 30 as one of his 'go-to' verses. He reported long-term involvement in Christian activities on death row, through East Cooper Baptist Church, "they gave me a study Bible, with my name on it, and I sent it to my daughter." He has completed "course after course" through various religious organizations. He has "done Kairos, participated in everyone I was allowed to, I like to sit and talk, have fellowship, Bible study, services."

Collateral Interviews [Ministers]: Several death row ministers who have worked with Mr. Bowman over the years, and currently, were interviewed.

Minister Gordon Manning regularly visited death row as part of his volunteer work with East Cooper Baptist Church. He saw Mr. Bowman for about three years, at Lieber CI, anywhere from 2011 to 2016. He "would go from cell to cell" and speak with individuals, "I befriended a handful, Marion was one of those, I enjoyed talking to him, he was a delight of a person." He thought Mr. Bowman was "so proud of his accomplishments" with regard to the Bible study course they offered, and worked very hard in completing the courses. He also described Mr. Bowman as eager, enthusiastic to learn, and was a "spiritual guy." He was "inspired by Marion, he had a good spirit, was friendly and was a very content person, I enjoyed my visits with him."

Minister Larry Tyree has been meeting with Mr. Bowman "for twenty years" in the course of his role as a volunteer chaplain on death row. He described Mr. Bowman as "affable, easy to talk to, we've become good friends." Early in Mr. Bowman's incarceration, Mr. Tyree established a book program on death row, "to make sure they were reading something of substance." He stated Mr. Bowman was very responsive to this program. Mr. Tyree saw "a radical change" in him, "Marion was reading a lot, he was enjoying what he was reading." Mr. Bowman appeared committed to learning new things, educating himself, and expanding his knowledge and viewpoint through the book program. Mr. Tyree also leads regular Bible study on death row "every other week." He described Mr. Bowman as committed and participatory, "asking lots of questions." Mr. Bowman "likes to be challenged," enjoys learning and "nothing is left unspoken."

Mr. Tyree also observed that Mr. Bowman is "completely adjusted to prison" in that he "is a shadow of the man he was before prison." He "is good, and decent, gets along with everyone very well, and is focused." Mr. Bowman tends to "be a leader," but "also a follower as he doesn't hesitate to ask questions." He also "tries to see the positive and is very optimistic." Mr. Tyree gave the example of Mr. Bowman finding inspirational or spiritual quotes on the wall of every cell he has been in, as a means of "seeing the positive." He also mentioned that he and Mr. Bowman "hug" each other, with no fear of physical contact, as he might have with some of the other inmates. Mr. Tyree has never seen any sort of aggression or agitation from Mr. Bowman and stated that Mr. Bowman would be the one to intervene if other inmates were fighting.

Minister Bob McAlister has had a death row ministry "on and off for the past 35 years." He has been working with Mr. Bowman since 2018 or 2019, after resuming his ministry. He is on death row "every other week" conducting Bible study, and religious discussions, as well as a "Christian worship service." He stated Mr. Bowman is "always there, every time, he's very quiet, and respectful, he doesn't complain about his plight, he's very polite." He believes Mr. Bowman is "dedicated to Christ, a born again Christian" who is "absolutely!" sincere and genuine in his beliefs. Given his many years of working in corrections, Mr. McAlister was asked if he saw any concerns with Mr. Bowman, should he be transferred to general population. He stated, "no risk at all, none whatsoever, and I would go so far as to say that if he had the right infrastructure on the street, he would not be a risk to society, but certainly no risk in GP." He sees characteristics in Mr. Bowman that would lend himself to "be successful" in a GP setting, such as Mr. Bowman's humbleness, politeness, quiet nature, and pleasant demeanor.

Collateral Records [Spiritual Certificates]: Mr. Bowman has received several certificates from Prison Fellowship Ministries, to include the following. In the Fall of 2005, he was recognized for participation in a seminar, "Faith Lesson from the Promise Land;" in the Fall of 2006, he was recognized for participation in a seminar, "When I Don't Desire God / How to Fight for Joy;" in August 2008, he received a certificate for participation in the 'The Perfect Stranger,' seminar; and in November 2008, received a certificate for his participation in the 'Flywheel' program.

In July 2014, he received a Certificate of Acknowledgment for participation in another religious endeavor. He has also received multiple certificates of completion from 'The Mailbox Club' for completing religious study guides and courses, including: "A Country and Heaven" [October 2014]; "My New Life in Christ 1, 2 and 3" [April 2015, June 2015, and November 2015]; "Practical Christian Living" [February 2016]; "God's Great Salvation" [June 2016]; and "Light from the Old Testament" [September 2016]. In February 2015, he earned "recognition as an honored graduate" for completion of "Basic Bible Study Series" through Central Church. In July 2016, he received "recognition as an honored graduate" for completion of "Word Bible Study Series" through Central Church. In June 2019, Mr. Bowman received a certificate of completion, recognizing him as a "honored graduate for the Central Church Word Bible Study, New Testament." The certificate "also marks successful completion of all available courses of study in the Central Church Correspondence Bible Study Program." An accompanying letter indicates that he has completed "10 study guides, in the Basic Bible Study Services," and "32 study guides in the Word Bible Study Series."

Coping: In addition to his religious and spiritual endeavors, Mr. Bowman "copes by helping people, by doing something good, by writing out prayers for others" citing several examples. He gave an example of assisting a mentally ill inmate "to get him out of his head because he hears voices, I joke with him and talk to him." He also "helps a 79 year old inmate, his eyes are bad so I read his letters and cards to him, help him call his sister, speak to medical staff for him, help him with his independence." Mr. Bowman is also trying to assist a new inmate, "trying to help, help him come out of his shell, and help him build rapport with the community" as he can see this inmate is struggling with the new environment.

Mr. Bowman also copes through his writings. He "writes to cope, when I experience something in the moment, may be just a sentence or several lines, I get what I'm feeling out…it's my way of venting, sometimes I tear them up, or keep them." He also uses drawing to cope, sharing some of his drawings with the examiner.

Collateral Data [Writings]: Mr. Bowman's notebook of writings was reviewed. His writings are spiritual in nature. He often cites scripture or references God, and details his gratitude, praise and relationship with God. Writings also center on his significant relationships, serving as a conduit to express his emotions, which include love, longing, admiration, and anguish. Many writings express the importance of his relationships, including, "*tomorrow holds no promises, but today I take comfort in your friendship."* Others reference his situation and how he copes by focusing on the present, writing: *"tomorrow isn't here, yet we fret over the unknown, let the joys of today stand alone."* He writes about using words and language to solve issues, "*we create so much around us with the words we speak, so with your words create the world in which you seek…let's employ words that build up, unify and not destroy."*

Frustration, sadness and anger are also channeled through his writings, captured succinctly in a verse: "*what prison does to the heart is very slowly pull it apart*…" To cope with such anguish, he cites his religious beliefs as a salve and salvation, writing, "*the storms do not have to overcome us, we can allow God's power to lift us above them*…" In a similar vein, he wrote in another poem, "*the light that I seek protects me spiritually, a love that guides me unconditionally, the waves of bad thought tosses me to and fro, but through the light of faith and love I'm not alone anymore."*

PRESENT EVALUATION: For each interview, Mr. Bowman presented as neatly dressed in prison-issued attire, and with good attention to grooming and hygiene. He was polite, respectful, and cooperative. His mood was pleasant, with an agreeable and good-natured demeanor; and appropriate, and stable affect. His speech was of normal volume, rate and prosody. There were no abnormalities observed in his psychomotor functioning. His thought process was linear and organized, with no bizarre content. When responding to inquiries, he was thoughtful, and detailed, with a sincere and genuine demeanor. Judgment and insight appeared intact. There were no overt indicators of major mental disorder, cognitive deficits or personality disorder.

Present Clinical Functioning: Mr. Bowman reported no symptoms consistent with a mental disorder, including major mood instability related to depression, mania, hypomania, or anger dyscontrol; psychotic symptomatology; self-injurious conduct, suicide attempts, or suicidal or homicidal ideation; traumatic stress; chronic elevated anxiety, panic attacks, intrusive worry or phobias; or obsessive-compulsive symptoms. With regard to current functioning, he reported no dysregulation in mood, affect, appetite, sleep, energy level, concentration, memory or cognition. His mood was somewhat discouraged due to a recent court loss, however, he "believes in the power of words, if I speak negative, I get negative, if I speak encouragement, positives will happen." He reported keeping a regular and structured daily routine, which includes strict medication compliance, calls to family, TV programming, prayer and Bible study, socializing with other inmates, and exercise. He comes out of his cell anywhere from 6:00 a.m. to 9:00 a.m., staying out until 5:00 PM, during which time he is around other inmates, officers and staff. He is heavily involved in Bible study with volunteer chaplains. He "reads the prayer or scripture of the day on the tablet" and reads inspirational spiritual material. He also writes poems regularly, and draws pictures to send to his family.

- His clinical functioning was further assessed via interviews with the death row psychiatrist, former nursing supervisor of death row, and review of his SCDC records.

Collateral Interview [Death Row Psychiatrist]: Dr. Robert Ellis, chief psychiatrist for death row, has known Mr. Bowman for the past five years. He confirmed he is not treating Mr. Bowman for a mental disorder, and does not prescribe him medication for psychiatric reasons. However, he speaks with him frequently, and is familiar with his functioning. He stated Mr. Bowman was previously the "head member of the IRC, he brought issues to the forefront" via communication with the prison administration, including the associate wardens. He described Mr. Bowman's work on the IRC as "excellent, proactive, he's a born leader, looks out for people, looks out for his fellow inmates, he's well respected from the staff's perspective, and he wants the community to get along." Several years ago, Mr. Bowman stepped down from the IRC, with Dr. Ellis noting, "it was his choice, he wanted to give someone else a turn, he wants to support and cultivate advocacy from his fellow inmates to take a role."

Dr. Ellis has "never felt threatened" by Mr. Bowman, stating, "I've never seen him angry, he's nothing but personable. I feel very comfortable sitting down with him. I've never wanted a CO present." He "would have no concerns if he went to the yard, no threat, if anything, he would be an asset to others" referencing the GP inmates. He stated Mr. Bowman has a "calming presence" and has "been invaluable in helping me with people who are non-compliant." Mr. Bowman will quietly speak with the mentally ill inmates who are not taking their medication, and is able to assist them with compliance. Dr. Ellis noted "he is sensitive to their perspective." Dr. Ellis described Mr. Bowman as possibly the "most respected" inmate on death row. He "is calming, speaks in a low tone, clear-headed, he's persuasive in a very mature way, can be very cool when talking about troubling things." He "has interpersonal skills and leadership ability, no psychopathic traits, he thinks thing through…he's a very different man than the boy who came in many years ago." Dr. Ellis believes if there was ever a situation on death row, "I feel like Mr. Bowman would protect me, he would not want a bad situation to happen, in his home."

Of note, prior to the consult, Dr. Ellis checked with the unit staff, including the Associate Warden, to ensure he was representing a consensus with his opinions. He stated "no one was apprehensive" and that he spoke for all who worked with Mr. Bowman.

Collateral Interview [Former Death Row Nurse]: Mr. David Chudd, RN, was a nursing supervisor on SCDC's death row for years, and remains at SCDC in a different capacity. He treated and interacted with Mr. Bowman for approximately five and one half years, from 2017 to July 2022, when death row transitioned to Kirkland CI and then again to Broad River CI. For some time, Mr. Chudd was "the only medical staff member on death row," and thus, was very familiar with Mr. Bowman. He "always had pleasant interactions" with Mr. Bowman, and held a "positive opinion" about him. He believed Mr. Bowman "always tried to be helpful, and he had a calming influence on the unit, with the other guys." Mr. Chudd observed Mr. Bowman to "always have a positive attitude and willing to put the work in" to solve a problem. He also referenced Mr. Bowman's work on the IRC, in that "a lot of the other inmates would bring him concerns, he was very eloquent, and he kept the peace with the other inmates."

For help with his own issues, Mr. Bowman actively reached out to Mr. Chudd, "he was willing to speak with me" and used Mr. Chudd as an available coping resource. Mr. Chudd also directly observed Mr. Bowman's ability "work through things, and deal with things" in an effective manner. He "has seen Mr. Bowman face physical and psychological challenges, and put in the work" to improve. He cited Mr. Bowman's serious back condition, after which he "didn't give up, was positive, put in a lot of work to rehab himself."

Overall, he "enjoyed dealing with Mr. Bowman, we had interesting conversation, he has a perspective I don't have. He was helpful in keeping the peace on the unit, he has a strong penchant for stepping up and keeping everyone stable, and taking on a peacemaking role…he was well received by the other inmates." He "never felt uncomfortable or threatened in any way" by Mr. Bowman and was "more at ease" when meeting with Mr. Bowman, than some of the other inmates. He believes Mr. Bowman would be able to "thrive and survive" in GP as long as he is stepped down appropriately, from the environment on death row (close custody) to the more open environment of GP.

Collateral Data [SCDC Records]: Due to his placement in death row housing, Mr. Bowman meets regularly with the unit counselor as a matter of protocol. Notes from these visits provide insight into his functioning. During the contacts, Mr. Bowman shares concerns about his family's wellbeing and the unit dynamics, discusses his interests and daily activities, and conversates easily with the counselor. The following notations by the counselor, from 2019 to 2022, are representative of Mr. Bowman's overall demeanor and functioning.

Notes include multiple references to Mr. Bowman's *interpersonal functioning*, with the repeated documentation of "inmate relates well with staff and inmates." Additional notations include: "inmate discussed the importance of everybody getting along with each other…or maintaining some distance from difficult people;" "wants to communicate better…and not say the wrong thing;" "noted people can disagree about events in the news without being disagreeable;" "often observed playing cards and socializing with other inmates;" "was respectful toward other group members;" "he said the inmates look out for each other, encourage each other and discourage disruptive behavior;" "other inmates have been very helpful and supportive toward him;" and he "socializes with other inmates throughout the day…often talks to neighboring inmates."

Notes include references to Mr. Bowman's *demeanor and character*, to include: repeatedly described as "calm" and "rational;" "positive and optimistic;" "he was very appreciative of my [counselor] efforts;" "thanked me several times for meeting with him;" "discussed an inmate he was concerned about;" "tries to set a positive example for other inmates;" "does take somewhat of a leadership role and sometimes counsels more impulsive inmates to think before they act;" "was very enthusiastic and positive that he was going to make some good changes;" "he discussed all the positive lessons he has learned over the years;" and "seems to examine situations with an open mind and sees various perspectives on the same news story." Specific to his work on the IRC, it was noted, "he advocated for two inmates on the restricted cell block to come to the unrestricted cell block…[he believed] it is the holiday season and it would great if one or both of them could have privileges restored before Christmas;" and Mr. Bowman "advocated for another inmate who is on the restricted side to stay on the restricted side."

Notes also reflect his concern and attachment to his *family*, illustrated by the following: "He said he is very proud of his daughter;" "Inmate always asks about my family and my well-being. He seems to be genuinely concerned. I allowed inmate to call his father to check on him. He seemed very respectful and caring toward his father;" "Inmate has been wanting to get some sketches of rabbits so he could give his nieces and nephews Easter-themed pictures;" "wanting to color pictures to send to his nieces, nephews and children of friends;" and "was wearing a necklace with some tags…said the tags were for inspiration and had inspirational notes on them, one tag had his daughter's name on it."

Present Neurocognitive Functioning: Mr. Bowman's present neurocognitive functioning was assessed via updated testing, and compared to prior testing results. During his pretrial SCDMH assessment, in 2001, IQ testing indicated a Full Scale IQ of 81; a Verbal IQ of 86; and Performance IQ of 80, with all scores falling into the 'Low Average' range of intellectual functioning. A neuropsychological screen was "adequate" in all domains. A head CT scan was without acute intracranial process, and an EEG study was normal. Defense neuropsychological testing in 2002 was without obvious deficit, with mostly average results across tests.

Updated Testing: In April 2022, updated testing was conducted by neuropsychologist, Dr. Joette James. On the Wechsler Adult Intelligence Scale, 4th Edition [WAIS-IV], Mr. Bowman obtained a Full Scale IQ of 84 [Low Average]; with a Verbal Comprehension Index of 95 [Average]; Working Memory Index of 92 [Average]; and Processing Speed Index of 92 [Average]. His Perceptual Reasoning Index [PRI] of 73, was notably lower, falling in the 'Borderline' range. In consultation with Dr. James, she described his overall intellectual functioning as essentially "average," with a notable weakness in visual spatial skills, as noted by the PRI. She described his language skills [verbal reasoning, verbal concept formation, vocabulary, and verbal abstractions] as "great."

Dr. James further noted that Mr. Bowman had improved his academic skills over time, in comparison to his testing from twenty-one years ago. While 2002 testing indicated 'Low Average' reading and spelling skills, 2022 testing with the WRAT-5, indicated his sight reading, reading comprehension, spelling, and math skills, all fell within the 'Average' range. This improvement is likely due to Mr. Bowman's heavy involvement in reading and writing over the years, both through his biblical studies, and through his own writings.

DIAGNOSTIC FORMULATION: The following diagnoses are rendered on the bases of the above data and per the *Diagnostic and Statistical Manual for Mental Disorders, 5th Edition, Text Revision [DSM-5-TR]*.

- **Diagnosis:** No Diagnosis of Mental Disorder

- **Medical Conditions:** Hypothyroidism

  Chronic radiculopathy
  Morbid obesity
  Status post laminectomy and microdiscectomy [2019]

Mr. Bowman does not meet criteria for a mental illness, cognitive disorder or personality disorder. Medical conditions are under sufficient treatment, with his musculoskeletal and obesity issues somewhat limiting mobility.

VIOLENCE RISK ASSESSMENT: To formally evaluate future violence risk, circumstances of the homicide were reviewed; factors correlative with institutional violence were assessed as applicable to Mr. Bowman; and a violence risk assessment measure was utilized.

Homicide Offense: The homicide involved the shooting death of an adult female victim, and occurred when Mr. Bowman was 20 years old. [2] The offense occurred within a period of heavy alcohol use; lack of prosocial structure; familial dysfunction; and easy access to firearms and drugs [crack cocaine], the latter of which was peripherally related. In consideration of his violence risk within a correctional setting, such contributory dynamics no longer exist, and/or are no longer viable. He has aged past the youthfulness, and related neurobiological immaturity associated with his age of 20, and is now a mature individual at the age of 42. He has not engaged in alcohol use, nor accessed crack cocaine, in his 21 years of incarceration. He has no access to firearms, given his environment, nor unsecured access to adult females.

In part, given that such contributory factors are not found within a correctional environment, research finds that community violence (e.g., the homicide offense) is not predictive of institutional violence. Additionally, any violence is a function of the individual, within the context of one's environment, and the restrictive setting of prison, is vastly different than society. Thus, a history of community violence is not a strong or reliable predictor of prison violence. [3] Relatedly, homicide offenders, such as Mr. Bowman, are no more violent than other types of offenders in a correctional environment. [4] Further, "a conviction for a capital murder has not been associated with disproportionate likelihood of assaultive prison misconduct as compared to other inmates in high-security classifications." [5] Finally, former death row inmates now serving life, as would be the status of Mr. Bowman should he be transferred to GP, have disproportionately lower rates of misconduct, including violence, than other types of inmates. [6, 7]

Known Correlates of Prison Violence: Although base rates of serious prison violence are low, compared to society, research has identified associated correlates when it does occur. [8] The most predictive correlate is young age, found to be "the strongest and most consistent finding," with the majority of prison violence committed by youthful inmates. [9]

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[2] Mr. Bowman maintains his innocence for the capital offense; however, given his convictions, the risk assessment was conducted as if he were culpable of the crime.

[3] Thomas Reidy et al., *Community Violence to Prison Assault: A Test of the Behavioral Continuity Hypothesis*, 36 LAW HUM. BEHAV. 356 (2012).

[4] Jon Sorenson et al., *Conviction Offense and Prison Violence, A Comparative Study of Murderers and Other Offenders*, 56 CRIME AND DELINQUENCY 103 (2010).

[5] M. Cunningham et al., *Correlates and Actuarial Models of Assaultive Prison Misconduct Among Violence-Predicted Capital Offenders*, 38 CRIM. JUSTICE BEHA. 5, 8 (2011).

[6] John Edens et al., *Predictions of Future Dangerousness in Capital Murder Trials: It is time to 'Disinvent the Wheel,'* 29 LAW HUM. BEHAV. 55 (2005).

[7] M. Cunningham et al., *Life and Death in the Lone Star State: Three Decades of Violence Predictions by Capital Juries,* 29 BEHAV. SCI. LAW 1 (2011).

[8] M. Cunningham & T. Reidy, *Integrating base rate data in violence risk assessment at capital sentencing*, 16 BEHAV. SCI. LAW 71 (1998).

[9] M. Cunningham & J. Sorenson, *Predictive Factors for Violent Misconduct in Close Custody*, 87 PRISON JOURNAL, 241, 241 (2007).

Inmates who are only a few years into their sentence, and serving a shorter sentence, also commit higher rates of prison violence.[10] Having served a prior prison term is also somewhat predictive of higher rates of violence, although the literature is mixed on this factor. [11] Membership in a prison gang is a potent risk factor for misconduct, and violence.[12] Finally, prior prison violence, is associated with higher rates of future prison violence.[13]

Applicability to Examinee: The majority of these factors do not apply to Mr. Bowman. He is not of young age; is not a few years into his sentence, nor serving a shorter sentence; and is not a member of a prison gang. He has served a prior term, albeit for less than a year; and has one incident of prior 'prison violence,' but this involved a minor fight at age 17, and he was not the instigator of this violence. Thus, Mr. Bowman does not flag for, or very weakly flags for, known correlates of prison violence.

Risk Assessment Measure: The **HCR-20^{V3}** is a formal interview and assessment tool designed to assess an individual's risk of future violence. The HCR-20^{V3} is comprised of twenty items in three domains, *Historical*, *Clinical* and *Risk Management*. Thus, the measure captures past, present, and future risk variables. Items are assessed for the *presence* of the risk factor, and the *relevancy (low, moderate or high)* of the item to address future violence for the individual.

HCR-20^{V3} variables have been demonstrated via research to correlate with an individual's risk of violence. This tool has been subject to rigorous empirical validation, and is used routinely in risk assessments for psychiatric institutions, consideration of bond and/or probationary sentences, and parole evaluations for those serving life sentences.[14] The HCR-20 has also been established to have "high predictability" of violence in correctional settings.[15] The updated version, the HCR-20^{v3}, has also been found to have "large" and good predictive validity in correctional samples, [16] [17] with "moderate to good predictive validity for physically violent misconduct" in prison settings.[18] Of note, research has found that the HCR-20^{V3}'s Clinical and Risk Management items are more predictive, than the Historical items.[19] Risk management items in particular, were associated with good predictive validity of institutional violence.

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[10] *Id.*

[11] Robert G. Morris et al*., Institutional Misconduct and Differential Parole Eligibility Among Capital Inmates,* 37 CRIM. JUSTICE BEHA. 417 (2010).

[12] R. A. Berk et al., *Forecasting dangerous inmate misconduct: An application of ensemble statistical procedures*. 22 J. QUAL. CRIM. 131 (2006).

[13] Cunningham *supra* note 8.

[14] Laura S. Guy et al., *Influence of the HCR-20, LS/CMI, and PCL-R on Decisions About Parole Suitability Among Lifers*, 39 LAW HUMAN BEHAV. 232 (2015).

[15] Henrik Belfrage, et al., *Prediction of violence using the HCR-20: A prospective study in two maximum-security correctional institutions*, 11 J. FORENSIC PSYCHIATRY 167, 2000.

[16] Mats Presson, et al. *Violence During Imprisonment, Forensic Psychiatric Care and Probation: Correlations and Predictive Validity of the Risk Assessment Instruments COVR, LSI-R, HCR-20 ^{v3}, and SAPROF*, 16 INT. J. FORENSIC MENT. HEALTH 117 (2017).

[17] Alicia Nijdam-Jones et al. *Predictive Validity of the HCR-20^{V3} with Incarcerated Males in Mexico City*, 48 CRIM. JUSTICE BEHA. 1450 (2021).

[18] Milena Abbiati, et al., *Predicting physically violent misconduct in prison: A comparison of four risk assessment instruments*, 37 BEHAV. SCI. LAW 61, 72 (2019).

[19] Belfrage *supra* note 14.

This finding supports the consensus that 'static' risk variables are less predictive in correctional environments, than 'dynamic' variables, or variables subject to change with intervention.

- Information on the HCR-20^{v3} variables was obtained through in-depth clinical interviews with Mr. Bowman, collateral interviews, and review of collateral sources.

HISTORICAL variables are considered <u>over an individual's lifetime</u> and include history of: 1) *violence*; 2) *antisocial behaviors;* 3) *substance use*; 4) *traumatic experiences;* 5) *instability of employment*; 6) *instability of relationships*; 7) *violent attitudes*; 8) *major mental illness*; 9) *personality disorders*; and 10) *problems with treatment response*.

Item 1 – History of violence. With regard to any 'history of violence,' Mr. Bowman's homicide offense, at age 20, is his most significant act of violence. Prior to this offense, Mr. Bowman was only involved in minor school fights, with no injuries, and he has no convictions for any other violent acts. With regard to any prison violence, Mr. Bowman was involved in one minor fight, at age 17, in 1998, with another inmate. The incident report is clear that the other inmate hit Mr. Bowman first. No weapons were used, no injuries resulted, and no medical attention was needed.

Therefore, primarily due to the homicide, this factor is considered <u>*historically present*</u>. However, it is <u>*low relevance*</u>, given the remoteness of the act, that it was an act of community violence and thus not predictive of institutional violence, and that he has had no violence of any kind in over 22 years. Further, his youth at the time of the offense contributed to this violence, given that youth are inherently more impulsive and reckless, without forethought or consideration of consequence. Such youthful traits reflect the immaturity of adolescent brain development, and is why violence spikes in late adolescence, and declines thereafter. [20] His mature age is therefore a strong argument against the possibility of future violence.

Item 2 – History of antisocial behaviors. Considering a pattern of 'antisocial behaviors' (criminal activity other than violence), Mr. Bowman had no childhood or adolescent history of fire-setting, animal cruelty, vandalism, gang activity, or assaultive conduct. He had several school altercations which resulted in suspension and juvenile charges (e.g., Simple Assault, Disturbing Schools). However, all charges were dismissed, and he had no juvenile adjudications.

Per his adult 'rap sheet,' Mr. Bowman has convictions of Burglary 3rd Degree, and Petit Larceny, Two Counts, at age 17, for which he served a YOA SHOCK sentence in 1998. He had a subsequent conviction for Driving Under Suspension, in 1999. In the year prior to his arrest, Mr. Bowman was implicated, but not convicted, in several property crimes, including burglary, grand larceny, receiving stolen goods, and a weapons law violation. While none of these alleged incidents involved violence of any kind, they represented a pattern of antisocial conduct, prior to prison. In prison, his SCDC disciplinary record indicates only 4 [non-violent] infractions over his present incarceration (ages 21 to 42). Two of these infractions would not be considered illegal or antisocial if he were in society (e.g., disrespect, and use of obscene language). Two others may be considered antisocial as they involved property destruction. However, two such infractions do not constitute a "pattern." Therefore, this factor is <u>*historically present*</u>, based on implicated activities prior to prison, but of <u>*low relevance*</u>, as he has not demonstrated such pattern in prison.

[20] See E. Cauffman, *Report of Adolescent Development*, June 4, 2023.

Item 3 – History of substance abuse. Mr. Bowman consumed alcohol as a teenager, with daily and heavy drinking in the years to months prior to his arrest. He also reported very infrequent use of marijuana as a youth, with no other substance use. He reported his last alcohol and/or substance use prior to his arrest, in February 2001, with no substance use in prison. Thus, he has not used illicit substances, or alcohol, in 22 years, despite widespread prevalence in SCDC. Therefore, this factor is considered *historically present* but due to the remote nature, and no use in prison, this factor is of *low relevance* to risk management strategies.

Item 4 – Traumatic experiences. As defined by the HCR-20^{V3}, Mr. Bowman did not experience significant developmental trauma, such as childhood physical or sexual abuse, extreme neglect, or pervasive violence exposure. He has not experienced such trauma during his incarceration (e.g. sexual assault, physical assault, riot exposure); and he has no history of a traumatic stress disorder (e.g., PTSD). Thus, this factor is not present.

Item 5 – Instability of employment. Prior to his incarceration, Mr. Bowman had multiple, short-term jobs, of varying duration, of which he either quit, or was fired. Thus, this factor was present in his late adolescence. On SCDC's death row, there are no employment options, thus, there is no opportunity to demonstrate or disprove this factor. Therefore, this factor is *historically present*, but of *low relevance* in risk management strategies.

Item 6 – Instability of relationships. Mr. Bowman was married age 19, and remains married. Over the years, he has also maintained close, positive and healthy connections to his family members, and significant others. Thus, he does not exhibit 'instability of relationships,' and this factor is not present.

Items 7 to 10 – History violent attitudes, mental illness, personality disorder or problems with treatment response. Mr. Bowman did not flag for any additional historical factors, as there is no evidence of 'violent attitudes;' and he has no history of 'mental illness;' 'personality disorder;' or 'problems with treatment response.' Thus, these factors are not present.

- **CLINICAL** risk factors are considered over the past six months and include recent problems with: 11) *degree of insight;* 12) *violent ideation or intent;* 13) *symptoms of major mental disorder;* 14) *instability of functioning*; and 15) *treatment or supervision response*.

Item 11 – Degree of insight. Mr. Bowman is very insightful regarding his circumstance, surroundings and functioning, which is illustrated by his communications and his writings. He has also involved himself in spiritual programming, which has increased insight into his choices, situation and judgment. Therefore, he has no problems with 'degree of insight,' and this factor is not present.

Items 12 to 15 – Symptoms of major mental disorder; violent ideation or intent; instability of functioning; treatment or supervision response. There is no indication over the past six months, or during his entire 22 years of incarceration, that Mr. Bowman has held any violent ideation or intent; had any symptoms of mental disorder; or exhibited instability of functioning; and he has no evidence of poor treatment or supervision response. Thus, these factors are not present.

▪ **RISK MANAGEMENT** factors represent an assessment of future variables over the next six months and include future issues or problems with: 16) *professional services and plans*; 17) *treatment or supervision response;* 18) *level of personal support*; 19); *living situation*; and 20) *level of stress and coping*.

Items 16 to 19 - Professional services and plans; living situation; level of personal support; and treatment or supervision response. Regarding future variables, it is not anticipated that Mr. Bowman will need any new, or different professional services for mental health, medical or other issues. If so, no problems would be anticipated with his response to such treatment given his full compliance with medical treatment, and unit counseling, thus far. Relatedly, no difficulties would be anticipated with his response to supervision (e.g., correctional supervision), based on an exceptionally consistent and compliant prison record. He has very strong personal support, from his family, present and former attorneys, and ministers, which would continue into the future. Further, if transferred to general population over the next six months, his proposed 'living situation' would likely be an SCDC 'Step Down' unit as per policy, which would be stable, and intended to reduce risk when transitioning to GP. [21] Thus, none of these factors are present.

Item 20 – Stress and coping. If transferred from death row to general population, Mr. Bowman would be housed in a different environment. The unit would be comprised of a greater number of inmates; have inmates that rotate through, versus familiarity with the same group; and he would almost certainly have a roommate. Activity level of the unit would be greater, including activity from other inmates involving disciplinaries; and he would likely have more freedom of movement. Thus, adjustment to this environment is a consideration, within the context of his stress level and coping skills.

First, SCDC has the option of a formal 'Step Down' procedure and unit(s) for inmates who transfer from closed custody housing, to general population. [22] This procedure has been utilized in the past for transfer of death row inmates, to general population. If utilized, success in this 'Step Down' procedure is required before placement in GP. In addition, as outlined above, Mr. Bowman has strong coping skills, developed over the past 21 years of his incarceration. He has strong interpersonal relationships, from which he draws support. As such, his privileges, such as visitation, are very important to him, and he would not risk jeopardizing his visits with misconduct. He engages in regular spiritual study and meets with religious volunteers, as a form of coping; in addition to his writing, which discharges his emotion and assist with stability. Further, over his 21 years of incarceration, he has managed significant stressors on death row, without resorting to negative coping (e.g., substances or violence). Instead, he has reached out to unit medical staff; and written detailed, rational, and respectful letters to the administration; and/or engaged in "peaceful protests" with a hunger strike. His relatively strong cognitive and intellectual skills assist in this process.

As any transition of this magnitude would create some level of stress, this risk factor is considered *present*, but of *low relevance*, given Mr. Bowman's support system, coping skills, history of managing stress, and SCDC's established procedure in managing such transitions.

[21] https://www.doc.sc.gov/policy/OP-22-38.htm.pdf, issued August 12, 2022. Accessed May 5, 2023.
[22] *Id.*

M. Bowman - Summary of HCR-20^{V3} Risk Factors, Presence and Relevance.

HCR-20^{v3} Risk Factor	Presence	Relevance to Risk Management
HISTORICAL [4]		
History of Violence	Historically Present No Violence in 22 Years	*Low* – Remote history – Well managed via age; maturity; clinical stability; stable temperament; and psychosocial support
History of Substance Abuse	Historically Present No alcohol or substance use in 22 Years	*Low* – Remote use – Continued complete abstinence from all substances is recommended
History of Employment Instability	History of multiple short-term jobs prior to arrest 22+ years ago	*Low* – Remote circumstance, no opportunity to demonstrate employment stability on death row
History of Pattern of Antisocial Conduct	Historically present 22+ years ago	Low – Remote history, no pattern of antisocial conduct in prison
CLINICAL [0]		
None	None	None
RISK MANAGEMENT [1]		
Future Stress and Coping	Present [Future] - Re: Transition to GP after restrictive housing	*Low* – Strong coping skills, and support, with prison procedures in place to effectively address transition

In sum, based on application of the HCR-20^{V3} risk factors to Mr. Bowman's specific history and situation, it is opined that 5 out of 20 risk factors are *present*. Four of these factors are historical, of remote significance, and with no evidence in decades; and one future variable, which is associated with strong mitigators. All factors are deemed of '*low' relevance* as defined by the measure. Of note, as discussed above, research with the HCR-20^{V3} has demonstrated that the Historical factors have lower predictive power of prison violence than the Clinical or Risk Management factors, which is in line with research on known correlates of prison violence.

Taken together, in consideration of his individual, case-specific details, and available risk management strategies, data from the HCR-20^{V3} indicates Mr. Bowman represents a very low risk for future violent acts within a correctional setting.

SUMMARY: Based on clinical interviews with Mr. Bowman; interviews with family members and extrafamilial individuals; consultation with evaluating and treating professionals; application of a violence risk assessment measure; utilization of relevant research on institutional violence; and review of legal, academic, psychosocial, medical and correctional records; the following was found.

Circumstances of the Homicide: The homicide involved the shooting death of an adult female, when Mr. Bowman was 20 years old. Given his age, it occurred within a period of neurobiological immaturity; and was preceded by months of very heavy alcohol consumption; family dysfunction, and lack of any prosocial structure. Factors contributory to the homicide are no longer present (e.g., immaturity, intoxication) and/or are not accessible (e.g., firearm).

Course of Incarceration: During his incarceration, Mr. Bowman has had very few disciplinaries, all of minimal severity. He has a remote history of one minor assaultive infraction, during a prior incarceration at age 17, involving a fight with another inmate. There were no injuries, or weapons used. He has maintained very strong interpersonal relationships with family and others, through daily calls, letters and in-person visits. For 12 years, he served on the Inmate Representative Counsel, acting as liaison between the administration and death row inmates. The Associate Warden who chose him for the "IRC" described him as "instrumental" in this role, by effecting positive change. He has heavily involved himself in spiritual and religious activities, through self-study courses, and by meeting regularly with prison ministry staff.

Mental Health/Medical: Mr. Bowman has no history of mental illness or mental health treatment. He is of average intelligence, with no cognitive disorder; and no personality disorder. Medically, he underwent emergent surgery for a laminectomy and microdiscectomy, in September 2019, with persistent numbness, pain and difficulty ambulating. He takes medication for chronic radiculopathy, hypothyroidism, and hyperlipidemia.

Violence Risk Assessment: Using an empirically validated risk assessment, and factors correlative to prison violence, Mr. Bowman's risk of future violence within a correctional setting is very low; and he has proven excellent adaptability to circumstance. He is of mature age; is clinically stable; has no substance use or violence over his incarceration; has excellent coping and interpersonal skills, and is heavily involved in prosocial pursuits. SCDC personnel who have worked with Mr. Bowman expressed no concerns about a potential transfer to GP, referring to him as a "model inmate;" who was "no trouble;" the "non-confrontational type;" had "adjusted well; "followed the rules and got along with everyone;" and would be "a good candidate for GP." The chief psychiatrist would have "no concerns" if Mr. Bowman were transferred to GP, and believes he would be an "asset" to other inmates in general population. A longstanding prison minister, with decades of correctional experience, believes Mr. Bowman poses "no risk at all, none whatsoever" and that Mr. Bowman has the tools to be "successful" in such a transition.

Such consensus mirrors the opinion of the corrections expert from 21 years ago, who predicted at Mr. Bowman's sentencing, "I don't anticipate him being disruptive. I anticipate him getting up and going to work. I anticipate this individual obeying rules and regulations and orders," with "no reservations" about this opinion. [23] Subsequent data regarding Mr. Bowman's correctional functioning, over two decades, have now confirmed his opinion.

[23] *Bowman v. State*, Testimony of James E. Aiken, Vol. 11, p. 4844, 4863.

In sum, relying on data from multiple and varied sources, results indicate Mr. Bowman is at significantly low risk for future violence in a prison setting, with proven adaptability.

Respectfully Submitted,

June 5, 2023

Susan C. Knight, Ph.D., ABPP
Licensed Clinical Psychologist
Board-Certified Forensic Psychologist

Date Signed

Exhibit 22

SUSAN C. KNIGHT, PH.D, ABPP

Telephone: (843) 637-5729; **Facsimile:** (843) 410-2802
Electronic Mail: knight@apsforensic.com
Mailing Address: 1941 Savage Rd., Ste. 100A-606, Charleston, SC 29407

EDUCATIONAL HISTORY:

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

PROFESSIONAL LICENSURE:

- Psychologist, State of California, License #20901 [June 2006 - Inactive]
- Psychologist, State of North Carolina, License #3407 [June 2007 - Active]
- Psychologist, State of South Carolina, License #1053 [May 2007 - Active]

BOARD CERTIFICATION:

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

PROFESSIONAL EXPERIENCE

Clinical and Forensic Psychologist **August 2013 - Present**
Applied Psychological Services, LLC
1941 Savage Rd., Ste. 100A-606
Charleston, SC 29407

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

Clinical Assistant Professor of Forensic Psychiatry **August 2013 - April 2014**
Community and Public Safety Psychiatry Division
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
29-C Leinbach Drive
Charleston, SC 29407

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

Assistant Professor of Forensic Psychiatry **January 2008-August 2013**
Associate Director of the Forensic Psychiatry Fellowship **July 2008-August 2013**
Director - Progressive Professionals Program (PPP) **November 2010-August 2013**
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
29-C Leinbach Drive
Charleston, SC 29407

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

Clinical Psychologist **April 2007- November 2007**
Grew, Morter and Hartye, P.A.
3141 John Humphries Wynd, Ste. 275
Raleigh, NC 27612

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

Clinical Psychologist **September 2005-December 2006**
Los Angeles County Department of Mental Health
Century Regional Detention Facility- Los Angeles County Jail
Women's Forensic Outpatient Program (WFOP)
11705 S. Alameda St.
Lynwood, CA 90262

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

Forensic Psychologist (Contract Basis) **September 2006- December 2006**
Metropolitan Detention Center- Los Angeles
Federal Bureau of Prisons
535 N. Alameda St.
Los Angeles, CA 90012

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

Forensic Psychologist **September 2006- December 2006**
USC-Keck School of Medicine
Institute of Psychiatry, Law and Behavioral Science
Los Angeles, CA 90086-0125

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

Postdoctoral Fellow in Forensic Psychology **September 2004 –August 2005**
University of Southern California/Keck School of Medicine
Institute of Psychiatry, Law & Behavioral Science
P.O. Box 86125
Los Angeles, CA 90086-0125

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

Pre-doctoral Clinical Psychology Intern **August 2003 - September 2004**
Federal Correctional Complex- Butner
Old N.C. Hwy 75
Butner, NC 27509

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

Graduate Student Therapist **May 2002- May 2003**
Outpatient Psychiatry/Ambulatory Care Building
550 S. Jackson St.
Louisville, KY 40202

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

Clinic Assistant **August 2000- June 2002**
University of Louisville/Psychological Services Center
Davidson Hall, Suite 210, Louisville, KY 40292

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

Research Assistant **August 1999 - July 2000**
Central State Hospital/Dept. of Psychology
10510 La Grange Rd.
La Grange, KY 40223

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

Caseworker / Case Manager **May 1998 - December 1998**
Crosspoint, Inc.
605 Augusta St.
San Antonio, TX, 78215

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

CLINICAL PRACTICA/PSYCHOTHERAPY EXPERIENCE

Graduate Student Therapist **August 1999 - May 2003**
University of Louisville/Psychological Services Center
Louisville, KY 40292

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

Doctoral Practicum Student (Assessment & Therapy) **August 2000 - September 2002**
Kentucky State Reformatory
La Grange, KY 40032

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

ACADEMIC APPOINTMENTS:

- **Clinical Instructor** **August 2004 - September 2005**
  University of Southern California
  Keck School of Medicine
  Department of Psychiatry and Behavioral Sciences
  Los Angeles, CA 90033

- **Adjunct Faculty** **August 2006 – December 2006**
  University of Southern California
  Department of Psychology
  Los Angeles, CA 90089

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

- **Clinical Assistant Professor** **August 2013- June 2015**
  Medical University of South Carolina
  Department of Psychiatry, Charleston, SC 29425

- **Adjunct Professor** **May 2011- Present**
  Charleston School of Law
  Charleston, South Carolina

- **Adjunct Professor** **January 2015- Present**
  Cornell University Law School
  Ithaca, New York

PROFESSIONAL AFFILIATIONS

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

SELECTED PRESENTATIONS

1. Knight, S.C. & Einstein, G. (1996). *Aging and Retrieval Inhibition in Prospective Memory.* Paper presented at the National Convention of Undergraduate Research (NCUR) in the Spring of 1997 in Austin, TX.

2. Weaver, C.M., Bock, P., Knight, S. & Gretarsdottir, E. (1999, November). *Demographic Study of 1998 Jefferson County Kentucky Guardianship Population.* Poster presented at the annual meeting of the Kentucky Psychological Association, Louisville, KY. Poster was awarded second prize for graduate research.

3. Knight, S.C., Scanish, J., Fintel, T., & Meyer, R.G. (2002, August). *Characteristic of the Female Sex Offender.* Poster presented at the 2002 APA conference in Chicago, Illinois in the APLS (Division 41) of research.

4. Knight, S.C. (2006). *The Sex Offender's Brain: A review of the etiological evidence towards a neurobiochemical basis.* Lecture presented to faculty, staff and students at the University of Southern California, Department of Psychology, as part of the Continuing Education (CE) colloquia.

5. Mulbry, L. W. & Knight, S.C. (March 2008). *Competency to Stand Trial, Criminal Responsibility and Capacity to Conform*. Presentation to the Charleston County Solicitor's Office.

6. Knight, S.C. (September 2008). *Psychological Autopsy: Determining the Manner of Death Through Investigative Psychological Analysis*. Lecture presented to the Medical University of South Carolina, Department of Psychiatry, Division of Forensic Psychiatry, Day of Discovery conference.

7. Stroud, Z., Knight, S.C., Halavonich, R.H., & Mulbry, L.W. (October 2008). *Mass Shooters: An Antihero of our Time.* Presentation presented at the national American Academy of Psychiatry and Law (AAPL) conference in Seattle, WA.

8. Knight, S.C. (July 2009). *The MMPI-2: Fundamentals of Interpretation.* Lecture to the Medical University of South Carolina Psychology Internship Program

9. Knight, S.C. (November 2009). *The Disruptive Professional*. Presentation given to the Senior Medical Leadership Council of the South Carolina Hospital Association. Columbia, South Carolina.

10. Knight, S.C. (November 2009). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant.* Presentation to the South Carolina Bar Association Distance Learning Division. Columbia, South Carolina.

11. Knight, S.C. (November 2009). *Psychiatric Malpractice: A review of select South Carolina cases.* [Invited Speaker]. Presentation given at the Medical University of South Carolina, Forensic Interest Group Meeting. Charleston, South Carolina.

12. Knight, S.C. (January 2010). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant.* Workshop on competency to stand trial and criminal responsibility presented to attorney participants at the Medical University of South Carolina. Charleston, South Carolina.

13. Knight, S.C. (April 2010). *The Mentally Ill Offender: An Epidemic in Courts and Corrections.* [Invited Speaker]. Presentation at the 2010 Mental Health Professionals Collaboration held at the Medical University of South Carolina for mental health professionals statewide. Charleston, South Carolina.

14. Knight, S.C. & Mulbry, L.W. (October 21, 2010). *Automatism: A 15-year review of criminal appellate case law.* Scientific paper presentation at the national American Academy of Psychiatry and Law (AAPL) conference in Tucson, AZ.

15. Knight, S.C. (October 29, 2010). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant.* Workshop on competency to stand trial and criminal responsibility presented to the Berkeley County Public Defender's Office.

16. Knight, S.C. & Mulbry, L.W. (January 30, 2011). *School Shooters: A Unique Class of Violent Offenders*. [Invited Speaker]. Presentation to the South Carolina Psychiatric Association (SCPA) statewide conference in Charleston, SC.

17. Knight, S.C. (June 2011). *Legal Insanity and Competence*. [Invited Speaker]. Update in Psychiatry-Mental Illness, Victimization and Criminal Justice. A Forum for Clinicians, Policymakers, Judges, Attorneys and Law Enforcement. Charleston, South Carolina.

18. Knight, S.C. (June 2011). *Relationship Between Mental Illness and Criminal Behavior. Update in Psychiatry-Mental Illness, Victimization and Criminal Justice*. [Invited Speaker]. A Forum for Clinicians, Policymakers, Judges, Attorneys and Law Enforcement. Charleston, South Carolina.

19. Beck, B., Knight, S.C., & Mulbry, L.W. (October 2012). *Robotripping: Dextromethorphan's Link to Violent Crime, Rising Use and Emergent Legislation*. Poster presented at the national meeting of the American Academy of Psychiatry and Law (AAPL), Montreal, Canada.

20. Knight, S.C. (December 2012). *Sexual Predators: Pathology and the Law*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.

21. Knight, S.C. (December 2012). *Legal Competence*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.

22. Knight, S.C. (April 2013). *Legal Competence: Civil Competencies*. [Invited Speaker]. South Carolina Association of Probate Judge's Conference. Columbia, South Carolina.

23. Beck, B., Knight, S. C. & Mulbry, L.W. *Revisions in Gun and Mental Health Laws in the Wake of Newtown*. Poster accepted for presentation at the October 2013 national meeting of the American Academy of Psychiatry and Law (AAPL), San Diego, California.

24. Knight, S.C. (September 2013). *Workplace Violence: Assessment, Intervention and Prevention*. [Invited Speaker]. A Psychiatric Update: Annual conference held by the South Carolina Department of Mental Health.

25. Knight, S.C., Mulbry, L.W., Mullis, D. & Fields, C. (October 2013). *Guns and Psychiatry: Disarming the Mentally Ill*. Grand Rounds Presentation, Medical University of South Carolina, Department of Psychiatry and Behavioral Science.

26. Knight, S.C. (December 2013). *Ethical Considerations in Forensic Evaluations*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.

27. Knight, S.C. (June 2014). *The Mentally Ill Offender: An Epidemic in Courts and Corrections*. [Invited Speaker]. National Judges Association: 35th Annual Education Conference. Charleston, South Carolina.

28. Knight, S.C. (October 2015). *Sentencing re: Miller: Perspective of a Forensic Psychologist in Juvenile Life Without Parole Hearings*. [Invited Speaker]. Columbia, South Carolina.

29. Knight, S.C. (August 2016). *Psychological Assessments in Juvenile Sentencing and Resentencing Cases.* [Invited Speaker]. Representing a Juvenile Facing Life Without Parole Conference. South Carolina Commission on Indigent Defense, Columbia, South Carolina.

30. Knight, S.C. (March 2017). *Navigating the Psycholegal Nexus: The Role of Forensic Psychology*. [Invited Speaker]. Southeastern Psychological Association (SEPA) – National Meeting. Atlanta, Georgia.

31. Knight, S.C., Young, L. & Jones, Z. (March 2017). *Structure and Substance in Sentencing: Legal, Psychological & Mitigation Elements of Miller Proceedings*. [Invited Workshop]. American Psychology-Law Society (AP-LS) – National Meeting. Seattle, Washington.

32. Knight, S.C. (March 2019). *Introduction to Mental Health Disorders, Signs & Symptoms Relevant to Mitigation.* [Invited Speaker]. Sixteenth National Seminar on the Development and Integration of Mitigation Evidence – Annual Meeting. Philadelphia, Pennsylvania.

33. Knight, S.C. (March 2019). *An Appropriate Framework for Assessing (the lack of) 'Future Dangerousness.'* [Invited Speaker]. Sixteenth National Seminar on the Development and Integration of Mitigation Evidence – Annual Meeting. Philadelphia, Pennsylvania.

34. Knight, S.C. (August 2019). [Invited Speaker]. *Working with Traumatized Clients and Vicarious Trauma*. 24th Annual National Federal Habeas Corpus Seminar – Annual Meeting. Pittsburgh, Pennsylvania.

35. Knight, S.C. & Paavola, E. (August 2019). [Invited Speaker]. *Mental Health Issues in Post-Conviction Investigation.* 24th Annual National Federal Habeas Corpus Seminar – Annual Meeting. Pittsburgh, Pennsylvania.

36. Knight, S.C. (August 2019). [Invited Speaker]. *JLWOP Psychological Assessments*. JLWOP CE – Justice 360. Columbia, South Carolina.

37. Knight, S.C. (March 2020). [Invited Speaker]. *Vicarious Trauma*. Habeas Assistance & Training Counsel Project. Seventeenth National Seminar on the Development and Integration of Mitigation Evidence – Annual Meeting. Philadelphia, Pennsylvania.

38. Knight, S.C. (March 2020). [Invited Speaker]. *Introduction to Mental Health Disorders, Signs & Symptoms Relevant to Mitigation.* Habeas Assistance & Training Counsel Project. Seventeenth National Seminar on the Development and Integration of Mitigation Evidence – Annual Meeting. Philadelphia, Pennsylvania.

PUBLICATIONS

1. Oliver, J. M., Knight, S.C., Weaver, C.M., Boyd, A.R. & Meyer, R.G. (2000). Attitudes of board certified forensic psychologists toward critical issues in forensic psychology and the legal system. *Bulletin of the American Academy of Forensic Psychology, 21 (1)*, 8-10.

2. Oliver, S.C., Knight, S.C., Weaver, C.M. & Meyer, R.G. (2001). Attitudes of forensic practitioners about competency to stand trial evaluations: Theoretical and practical considerations. *Bulletin of the American Academy of Forensic Psychology, 22 (1),* 20-22.

3. Knight, S.C. & Meyer, R.G. (2003). Gender Identity Disorder: The Case of Bruce/Brenda. In R.G. Meyer's, *Case Studies in Abnormal Behavior (6th ed.),* (pp. 134-140). Boston: Allyn & Bacon.

4. Knight, S.C. & Meyer, R.G. (2007). Forensic Hypnosis. In A. M. Goldstein's (Ed.) *Forensic Psychology: Emerging Topics and Expanding Roles*, NY: Wiley.

5. Gomez, A. & Knight, S.C. (2013). Disclosure of Mental Health Records in Court-Mandated Outpatient Treatment Proceeding and the Health Insurance Portability and Accountability Act (HIPPA). *Journal of the American Academy of Psychiatry and Law*. Vol. 41: 460-641.

Exhibit 23

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

AFFIDAVIT

Ralph Hunter, who appeared personally before me, affirms and states the following:

1. I, Ralph Hunter, am retired from the South Carolina Department of Corrections. I started with SCDC in 1986 and retired in 2011 as an Associate Warden at Lieber. I was assigned at Lieber from 2009 to 2011.

2. As an associate warden, I did not always interact with the death row inmates on a day-to-day basis, but I did develop professional relationships with some of the inmates. Marion Bowman was one of those inmates who I had a professional relationship with over the years. If I ran into Marion again, I would be excited to see him and would want to give him a hug.

3. I made Marion a dorm keeper, which was a job where the inmate is allowed out of his cell to sweep, clean the shower, and collect the food trays. Death row was mostly locked down and all the inmates wanted out of their cells, so the job was coveted. Getting the job was a privilege and Marion Bowman earned the trust to be assigned the job.

4. As a dorm keeper, Marion worked hard. He was always jovial. Not one person expressed concern about Marion being out of his cell. Even though Marion was a big man, no one was concerned about him causing trouble. Rather than cause trouble, Marion would help the officers interact with the inmates and explain the context of inmate concerns.

5. While I was associate warden, I offered a character class to the officers and even the death row inmates to try to motivate people to model good behavior. The class only lasted for 2-3 months but Marion took the class and did well in it.

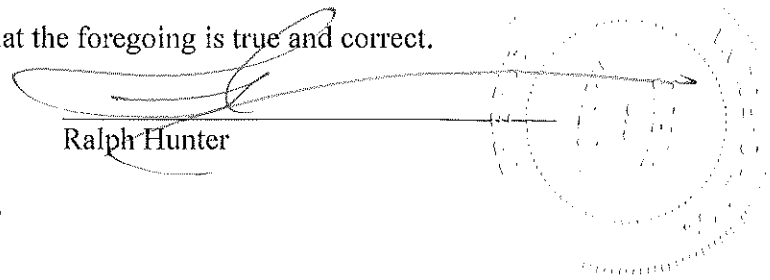
6. Marion's behavior was already that of a model inmate before he took the class, but he always welcomed any means of filling his time constructively. He adjusted well to prison and helped others to adjust, as well. Marion was low key, easy going, and likeable by staff and inmates alike.

7. Marion was selected to be a part of the Inmate Representative Committee (IRC). The purpose of the IRC was for the prison staff and the inmates to have an open line of communication about issues like safety, food, interactions with staff members, and conditions of the prison, among other issues. As a member of IRC, Marion was reasonable, fair, and someone I could trust.

8. In my position at Lieber, I experienced the process of death row inmates being sent from Lieber to Broad River to be executed. Executions were taxing on my staff members as it was hard to watch inmates my staff had known for many years drive off knowing they would never return.

9. I support a conversion or commutation of Marion's sentence to a life sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.



Ralph Hunter

Sworn to and subscribed before me
This 12 day of October, 2023

Brie Rust

Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 24

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF BERKELEY)

Darryl McGhee, who appeared personally before me, affirms and states the following:

1. I, Darryl McGhee, have been retired since 2018. I previously served as a Lieutenant for the South Carolina Department of Corrections. I worked on death row at Lieber for five years.

2. I got to know all of the guys on death row during my 12-hour shifts. Marion Bowman was a nice, quiet guy, who liked playing basketball. Marion was no trouble. He followed the rules and got along with everyone. Marion also had a job cleaning up on the row.

3. Marion's mother used to visit every Sunday. She was lively and fun.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

D M M
Darryl McGhee

Sworn to and subscribed before me
This 24 day of October, 2023

Brie Rust
Notary Public for the State of South Carolina
My commission expires: 3/24/27

SOUTH CAROLINA NOTARY PUBLIC BRIE RUST

Exhibit 25

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF ORANGEBURG)

Marissa Bowman, who appeared personally before me, affirms and states the following:

1. I, Marissa Bowman, am over the age of 18 years old.

2. I am Marion Bowman's only child.

3. I was born eight months after my father was incarcerated, despite that, my father has been a consistent presence in my life. I rely on him for support, advice, and to pick me up whenever I am feeling down. Growing up I always dreamed about the day my dad would walk out of prison and come home to us. I dreamed that when I would be having a big moment in my life that I would turn around and he would be there. As the years went on, I had to face the fact that my dad wasn't going to be able to be physically present in my life.

4. We have a very strong bond that I know most people with incarcerated dads don't have. My mom and grandmother tell me that I have been going to visit him since I was "an arm baby," meaning I was about the length of his arm when he held me. Obviously, I don't remember that, and it hurts that I have never been able to give him a hug since my memories started forming, as contact visits have been discontinued.

5. I remember when I was in 3rd grade my mom was struggling a lot to keep our family together. She and her boyfriend at the time were fighting and arguing all the time. My siblings and I all ended up having to go live with different relatives and my mom chose to stay with her boyfriend. My first actual memory of visiting my father in prison was that same year. I told him about everything that was going on in our house and how I had to go live with my uncle. He talked to me about how we cannot always control the things that happen to us, but we can do our best to stay positive and do the best we can with what we have. He reminded me that I could call my maternal-half-siblings any time I wanted and that our family would make sure that we all got to visit him and each other regularly.

6. I have had a difficult and strained relationship with my mother over the years. She has three other children besides me and, at times, has chosen men over all of us. I did not really understand what was happening at the time, but looking back it is very clear to me now. When I talk to my dad, he helps me process everything that is going on, encourages me to focus on the positive and on the things that I have control over to make sure negativity does not get the best of me. I have struggled with depression over the years, and he has always helped me regain focus, hope, and drive. My mother has been struggling with multiple health problems over the last few years and my dad could soon be the only parent I have to help guide me through adulthood. Most significantly, she has been receiving treatment

MTB

for a brain tumor the last few months at MUSC and her condition remains unstable. My family lives in fear that each day may be her last. He may not physically be present, but spiritually he is always with me, and our visits and calls help get me through the days.

7. Growing up, I have strong memories of my dad always reminding me that doing well in school was totally up to me and that is where I should focus my efforts. Sometimes I started to lose faith in school and I wanted to give up, but then my dad would call and say "what's up with school?" I would always try to beat around the bush, but he always had an intuition about whatever I was going through; he can read me like a book. He helps me get through school, but also through life.

8. Because of his encouragement I was able to graduate from high school and then begin taking college courses. In fact, the main focus of our conversations throughout my life has been about school. He is really big on school and he wants me to get the most I can out of my education. He keeps pushing me to further my education in nursing and to keep me on the right path. He always reminds me to stay out of trouble and away from people who are up to no good. I know we have a really strong bond and that he will always guide me the best he can from where he is.

9. All the long talks we had, and still have, help keep my spirits up. He is my best friend, but he is a father first. It was also important to him to be there for my brothers, even though they are not his biological children. He would always tell them when they were going down the wrong path and he would encourage them to do better. He taught us how to take care of ourselves and what signs to look out for in order to keep ourselves safe.

10. My dad never missed a beat. I played sports in school and he would call me every game night, he would call me after every award ceremony, and also after every family gathering. Any little thing that is going on in my life, he wants to know about it and he will call to see how it went. Now that I'm older when he knows that I've been out with my friends, he will call me late at night and say "it's dad, I'm just calling to make sure that you're safe." Knowing that I am safe makes him the happiest person ever. He will also call just to say "I wish I could be there," and "you are in my heart and my mind during every milestone, through the good and the bad."

11. Not having my dad here in person has always been extremely difficult. My dad was not there when I learned to drive, or for my high school graduation, or even for the birth of my child. That has been an extreme punishment to us both, but it has been so helpful to be able to talk to him about all the things that lead up to those moments and the moments that have passed since. When I was younger, I had hate and anger in my heart because my dad wasn't physically present in my life. As I got older, I began to understand that it isn't about him being with me physically, but it is about the support that he gives me. Taking him entirely from this Earth would be more than I can take. The emptiness I have often felt when I have

MTB

physically wanted him to be present could only be made worse if I couldn't ever hear his voice again.

12. I need my dad, his sisters need him, his aging parents need him. He has always maintained a positive attitude and has brought so much light to all of us when we feel there is nothing but darkness. I am not sure how I would have made it through the sadness of my brother's death last year without his calming presence and constant guidance. He brings so much happiness and guidance through every conversation and at every visit.

13. My dad is a critical part of my life and I look to him for advice on everything, especially now that I have a child of my own. He is my best friend and my dad. He always hears me out and lets me tell him about anything going on my life before giving me advice or telling me not to make a mistake. We talk everything through and talk about consequences, and when I was younger the house rules. He pushed me to stay in school and to apply for nursing school so that I will be able to have a more stable and successful life than my mother has been able to provide for me. There was constant pressure on me to help provide for my siblings, but my dad helped me to stay focused and push through school so that I can have a better life.

14. I know that my dad has a similar impact on everyone else around him. He has a positive influence on the other guys that he has lived with for so many years on death row. Through those connections he finds strength, hope, and fulfillment because he is able to help and serve others. My dad is outgoing, sweet, loving, caring, and will always give everyone his honest opinion. He will give you the shirt off his back, the last of his canteen, or anything else he can do to help.

15. Religion is another thing that is very important to my dad and something that he often shares with me. He believes in putting God first and he has taught me that it is important to have faith in God. Even when I wasn't able to tell him something, he would tell me that I should get on my knees, pray to God, and talk it out with God. This helped me process the hate and anger in my young heart, because of his physical absence. Now I understand it is all about the support from my dad and God that lead me forward.

16. After participating in a Bible Study Course, my dad was given a Bible. He immediately gave it to one of the lawyers on his team to deliver to me. He has always encouraged me to read and study the Bible. We talk about everything, we read, and we pray together. Since my daughter was born, we decided that we should pass his Bible along to her when she is old enough, and that it should continue to be passed down to future generations. He loves Psalms and reminds me to see the positive, that everything is a brick that I need to step up onto, and learn. He is a very active father in every part of my life.

17. It was really difficult for me when they suspended visits for so many months during COVID. Not being able to see my dad with everything else that was going on in our

community, and in the world, was heartbreaking. Because of that experience, I am very aware of how devastating it would be not to be able to visit my dad in prison.

18. I need my dad now just as I have needed him in the past and will continue to need him in the future. I can't imagine my life without my dad or my daughter's life without her grandfather. I do not know how we will survive without his guidance, love, and support. I cry whenever I think about it, so I try not to. I beg that you allow my father to be in my life forever, understanding that he will always be incarcerated remains difficult but being able to call him and visit him drastically improves my life. I appreciate him, I care about him, and I will love him forever.

19. I am in support of a conversion or commutation of my father's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Marissa Bowman

MARISSA BOWMAN

Sworn to and subscribed before me
This 9th day of November, 2023

Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 26

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF ORANGEBURG)

Denise Bowman, who appeared personally before me, affirms and states the following:

1. I, Dorothy Denise Bowman, am over the age of 18 years old.

2. I am Marion Bowman, Jr.'s mother. He is my only son and the brother of my two daughters, Kendra and Yolanda. I affectionately call my son J.R., but I will refer to him as Marion here.

3. Even as a child, Marion has always been someone who I have relied upon. When he was young I struggled with health issues that sometimes caused me to be unable to work for days. When Marion was a child, I filed a workman's compensation claim after an injury that I suffered at work. The claim took so long to process that I lost our apartment and was out of work for months. Without the support of Marion's father, from whom I was estranged, I struggled to provide for our family; I really had nothing. Even though he was too young to work, Marion stepped in to help by earning money through odd jobs, such as raking yards, so that we could afford to buy soap and laundry detergent. He was only 9 years old when he started washing cars, hanging Christmas lights, and mowing yards, all so that we wouldn't go without the basic essentials. When I was unable to care for myself, Marion would make sure that we had food and then prepare meals for me and his sisters. He waited on me hand and foot. He was truly our maid and personal chef. This is who Marion is and has always been. For birthdays and Christmas, Marion would always make sure that we had something. One time, for my birthday, all he could afford to buy was a pack of bubble gum, but he bought it in order to make sure that I had something to open on my birthday. To this day he continues to make sure that we feel special on our birthdays.

4. Unfortunately, Marion didn't have a strong father figure to rely upon. Marion often witnessed his father push, shove, punch, and hit me. I now have to wear dentures as the result of having my front teeth knocked out by brass knuckles at the hands of Marion's father. I remember wearing makeup, sunglasses, long sleeves, and oversized clothing in hopes that no one would notice what was happening inside of our home. It was a very abusive relationship and it was Marion's number one priority to not have any other child experience the home environment that he experienced.

5. As an adult, Marion continued to be a committed caregiver. He married, Dorothy "Dot" Bowman, and took her two children in as his own. He wanted to make sure that they had a better and more stable childhood than what he was able to experience. He made sure that they had food, shelter, clothing, and anything else they needed to survive. He did not want his stepsons, Corijoin and Teijion, to have to suffer through living in extreme poverty.

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6. Marion is someone who constantly uplifts everyone in our family. He sends cards and letters for the holidays. He has developed an impressive talent for art and is always sending us beautiful drawings with positive images to make us smile. He makes sure to remind us of when we have follow-up doctors' appointments and reminds us that we need to get flu and COVID vaccinations in order to protect ourselves. He does whatever he can to make sure that we can live long and happy lives. I do not know what I would do without his love and support.

7. Our family has suffered many losses since Marion has been incarcerated. Despite his own pain surrounding those losses, Marion remains strong for each and every one of us, including my sisters, his sisters, and for me. He helps us through the depressing moments by sending cards with uplifting messages. Those messages bring joy to us all, even in the hardest of times. No one in our family can even imagine what it would be like to never be able to hear Marion's voice again and never again be able to visit him. There are no words to describe the physical and mental pain that I would suffer if Marion was taken from this earth.

8. Marion always makes sure to call to check in on everyone in our family. He encourages his nephews to stay out of the streets by talking to them about the mistakes that he made and the choices that led to his incarceration. He wants his nephews to stay safe, so he always tries to help them through their struggles and help them to see a safe and healthy way of life. His advice and listening ear are so important to us all, and I know there isn't anyone in our family who could imagine not being able to turn to Marion in their times of need.

9. Marion has the greatest impact on his daughter, Marissa. He has been there for her since the day she was born, even though he was already incarcerated at the time of her birth. He encourages her to do well in school and to pursue a higher education. He truly wants everyone to have the best life they can have. When things are hard for Marissa, Marion helps her to see the positive and he helps her to maintain hope for a better future. Although he has expressed frustration about not being able to be physically present for the big life events in Marissa's life, he continues to try to be there spiritually for her in those moments. Marissa has a strained relationship with her mother, who has struggled to keep her family together. Dot suffers from significant health issues and Marion will likely soon be the only parent that Marissa has.

10. Part of the influence that Marion has on Marissa, is a spiritual one. He shares with her his strong commitment to his faith and has done so throughout her life. Since being incarcerated, Marion has only become closer to the Lord. He studies, prays, and shares quotes from scripture with me. He is even able to recite scripture from memory.

11. Throughout my life, I have had to endure several debilitating health conditions. In 1990, when I was 28 years old, I woke up one morning and fell out of the bed. Soon after I was diagnosed with rheumatoid arthritis and a bulging disc. I had to have three surgeries when Marion was growing up. I know this was a traumatic experience for all of my children, because it completely changed everything; I couldn't walk, shower, cook, clean,

PB

or anything else. Even after three surgeries, I have remained in constant pain and still deal with a bulging disc today. At my age recovery will be extremely difficult and I am reliant on help from others. Although, Marion is not able to physically help me, I rely on his calls for support and love.

12. I speak to my son every morning. He calls to check in on me and he provides me with support that only he can give. My great-grandson is living with me and he speaks with Marion regularly as well. He is our backbone and our greatest source of support.

13. Marion serves others on death row as a leader, a mentor, and a physical assistant. Marion lifts the spirits of those around him. He has close relationships with many of the other guys on death row. He helps them in times of need and works to lift their spirits every day. Some of the men are elderly and in need of extra assistance. Marion helps them get around, helps them get the medical attention that they need from staff, and in general he tries to make their lives as easy as he can. He also helps bring those around him closer to God. Most importantly, Marion works together with others to keep peace on the row. He helps staff and other inmates communicate and work together through positive communication and compromise. This is the type of gift that he brings to the world.

14. I have visited my son every chance I get since the day of his arrest. When death row was located at Lieber, I was able to visit almost every Sunday and I would take Marion's daughter, Marissa with me. Since death row moved to Columbia, the distance and my medical issues have made it more difficult for me to visit. I still try to go as often as possible, because our visits are so special to me. I have had to watch my son grow up behind bars, but being able to see him has helped me get through the pain of not being able to hug him.

15. Although I physically watched him grow up in the community, I have seen him mentally and emotionally mature behind bars. I wish that he would one day have the opportunity to celebrate big life events with us in person, but I know that he will never be on the streets with us again. He has grown from a 19-year-old boy into a mature, loving, empathetic, and caring man. He demonstrates this to every person that he encounters, including guards, inmates, family, clergy, and friends. I know that he poses no risk to anyone, rather he brings light to the lives of everyone he meets. So much has changed and he has truly developed into a wonderful man.

16. Marion continues to have a large impact on his daughter's life. I have truly enjoyed watching and listening to Marion be the best father he can be, and I now enjoy watching him become a wonderful grandfather. He is, and will continue to be, a source of inspiration for the next generation.

17. To lose Marion would be devastating to me. He is a very important part of my daily life and I truly miss my baby. Speaking with him every day is the best way to start the day. Together we process the challenges we are facing and we grow closer to God through our conversations. He lifts my spirits and reminds me to stay positive, regardless of the obstacles I encounter. No mother should have to bury her child, especially when that can

DB

easily be prevented. I know that there is another family that has lost their child, but taking Marion's life would serve no purpose. Regardless of the wrongs that one may have committed, the taking of a life is painful to everyone involved, and it is unnecessary. I beg that you can find it in your heart to spare Marion's life. He means so much to so many people and we would be lost without him. I need him in my life and I hope that you can find it in your heart to allow Marion to live out his natural life in prison rather than end his life through execution.

18. I am in support of a conversion or commutation of my son's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Dorothy D. Bowman

DOROTHY DENISE BOWMAN

Sworn to and subscribed before me
This 11 day of February, 2024

Brie Kent

Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 27

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF ORANGEBURG)

Marion Bowman Sr., who appeared personally before me, affirms and states the following:

1. I, Marion Bowman, Sr., am over the age of 18 years old and live in Orangeburg County.

2. I am Marion Bowman, Jr.'s father. This case has been very hard for me. I feel torn down, heartbroken, and as if there is nothing that I can do. I have been diagnosed with colon cancer and fear that I do not have long to live. I know that if Marion were at home, he would do anything I asked and would help to take care of me, especially while I go through chemo. We all need somebody to lean on and Marion would be that person for me. He is always encouraging me not to give up, to stay strong.

3. Since he has been on death row, I talk to Marion about 2-3 times per week and I know that Marion has become a more spiritual person. He has been trying to keep younger people on the right track and I know that he wants to prove that he is a better person. I hope that he will continue to have the opportunity to help other people in the future.

4. If Marion were executed, it would rip my heart out. I would be losing my child. I have lost a lot of sleep over this throughout the years. It is even hard for me to visit my son, because when I do I become afraid that I won't be able to make it home. Visitation was so hard on me that I felt like committing suicide. If Marion were to be executed it would make it even more difficult for me. No man could stand to watch their child die.

5. I love my son and I would do anything I could to save my child. It would be devastating for me to lose Marion. I hope that his life can be spared, so that I can continue to have a relationship with him.

6. I am in support of a conversion or commutation of Marion, Jr.'s sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Marion Bowman Sr

MARION BOWMAN, SR.

Sworn to and subscribed before me
This 24 day of October, 2023

Jonie Rust

Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 28

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF ORANGEBURG)

Quanisha Clark, who appeared personally before me, affirms and states the following:

1. I, Quanisha Clark, am over the age of 18 years old.

2. I am Marion Bowman's maternal cousin; our mothers are first cousins.

3. I was only four years old when Marion went to jail, but we reconnected in 2019. I now regularly speak and visit with him. Although visitation at the prison is uncomfortable for me, it is very important to me to be able to see my cousin, so I visit anyways.

4. Marion keeps in touch with all of his family and plays a very important role in their lives. He encourages everyone to spend time together and to take care of one another. I know that Marion's father is unreliable and sometimes tells him that he is going to visit and then does not show for the visit. This has been a pattern throughout Marion's life. Despite that Marion continues to maintain a relationship with his father.

5. I would describe Marion as a gentle giant, or a giant teddy bear. He supports me in every way. He is the best support system that you could ever ask for and the best person to have in your corner. He is reassuring, positive, and I depend on him. Even when he is feeling down, he doesn't complain. He relates his disappointment to stories in the Bible and that helps him maintain his faith.

6. Marion keeps a calendar so that he never forgets someone's birthday, anniversary, or even their doctor's appointment. He always sends cards to celebrate special occasions. He reminds his loved ones of their doctors' appointments and then follows up with them to see how the appointment went. Recently, his mother, his daughter, and I were all in the hospital at the same time. He called many times before I was able to answer the phone, because he wanted to be on the phone when the doctor came in to explain what was going on. I know it hurts him deeply to not be able to be there for his loved ones in person. He worries about those he loves and wants to know what is going on with them, so that he knows how best to be supportive.

7. Marion supports me in every way. He encourages me in my endeavors to start a business, he gives me advice when I talk to him about my financial situation, and is always ready to lend an ear whenever I need to talk through various things that are happening in my life. I own a make-up business. Marion supports me in that by encouraging me to do things like make and sell t-shirts, he started a log all on his own to keep track of my inventory, and whenever he sees a relevant commercial on tv, he takes notes and then tells me about it when we talk. He does the same thing when I mention that I need a couch, or something like that, he will watch tv and then let me know when there are stores that are advertising sales. In this way, he stays involved in my life, helping me however he can.

8. I know that Marion frequently helps out the other guys on death row as if they were his own family members. He supports them emotionally and will share what little he has with them. Even when Marion doesn't want to play a card game, he will play when asked because he knows how helpful that is to the other guys' mental health. He will buy them chips, socks, headphones—whatever they need even when he doesn't necessarily have extra to give. There is an older gentleman, named Mr. Fred, on the row who Marion checks on frequently. He makes sure that the older man eats and will put him on the phone when we talk so that I can also encourage him to eat too. Marion even follows up with the deputy warden when Mr. Fred needs new glasses or treatment for the gout in his feet. Marion notices when the other guys stay in their room, or seem down, and he will go to check on them. He is a call-to-action type of person.

9. Faith is very important to Marion. He never misses a Bible study, no matter what. When we talk in the morning, he always reads to me from his Bible. In the evenings we pray together. Whenever he is starting to doubt the journey, he will refer to a story in the Bible. For example, we talked about the story of Jonah and the whale. Scientifically speaking, Jonah should not have survived inside of the whale, but he is proof that miracles do happen.

10. We talk several times a day, and through our phone calls, Marion has created close relationships with other family members. For example, whenever Marion calls, my four-year-old niece always wants to talk to him and she ends up taking over the conversation. In fact, she will refuse to eat breakfast until after she has talked to him. He is a thoughtful person and will draw pictures of all of my niece's favorite things for her. He has also given me some of his art, which I have framed and hung on my walls. I think of him whenever I catch a glimpse of the pictures. Marion also has a close relationship with my mom and has maintained contact with her through letters since long before he and I reconnected. He talks to her on the phone as well.

11. Marion checks in with me throughout the day. When we talk in the morning, we break down the stories in scripture to find meaning relevant to our lives and talk about my plans for the day. We don't do this as often now because Marion was able to get a job serving food in the morning. He checks in with me at lunchtime. When we talk in the evening, we talk about my day, about cooking, and about motorcycles. He also checks to make sure I have gas in my car, because I'm bad about that. He gets nervous whenever I have to stop for gas at night and will stay with me on the phone to make sure that I am ok. On the weekends, we talk on the phone during football games. We both root for the Dallas Cowboys. When Marion isn't able to watch the game, he will call so that I can fill him in on how it is going.

12. If Marion were to be executed, it would greatly impact my life in a negative way. Our calls are a huge part of my daily routine. I don't know what I would do if I did not have him around to talk to. I would be disappointed in the justice system if I were to lose my cousin to an execution. I remember when Marion lost his last appeal and I felt that there was a dark cloud over my head. I couldn't sleep and I found it hard to talk. It is important to me that his life is spared because he means so much to me.

13. I am in support of a conversion or commutation of Mr. Bowman's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Quanisha Clark

QUANISHA CLARK

Sworn to and subscribed before me
This 20 day of October, 2023

Brie Rust

Notary Public for the State of South Carolina
My commission expires: 3/24/27

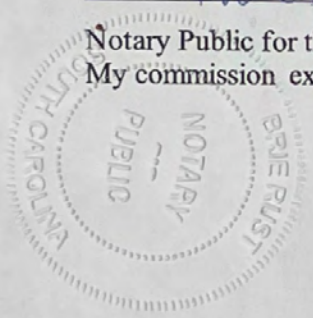


Exhibit 29

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF ORANRGEBURG)

Lorraine Johnson, who appeared personally before me, affirms and states the following:

1. I, Lorraine Johnson, am over the age of 18 years old and live in Orangeburg County.

2. I am Marion Bowman's maternal aunt; his mother, Denise, is my sister. I have known him all of his life. As a child, Marion was just a normal young boy and never created any problems. He was close with all of his cousins, and they regularly spent time together at my mother's house.

3. Marion is someone who would do anything for someone else if he is able. He has been a kind hearted person ever since he was a child and I would describe him as a gentle giant. Despite his current situation, Marion always asks about what is going on in my life and tries to build me up when I am down.

4. Marion sends cards that are inspirational and include Bible verses. He is always trying to uplift you. He never complains, not even when it comes to his case. Rather, he is always asking about everyone else and encouraging them to be upbeat.

5. I know that Marion provides his mother with a lot of support as well. I am concerned about my sister's health. Marion's situation hangs heavy over my sister's head and it definitely has a negative impact on her health. She has changed a lot because of this. For example, Denise always used to be the life of the party, but now she keeps to herself. While she used to always love to dance, now she sits in the corner and keeps to herself at family functions. It has torn our family apart to have Marion be on death row. If Marion were to be executed it would only further divide our family. I do not think that Marion's mother would recover if he were to be executed.

6. Marion's daughter, Marissa, is also very close with her father. Marissa recently gave birth to her first child in August and I know that Marion is enjoying being a grandfather. Marissa relies on Marion a lot and frequently goes to him when she needs to talk through the things that happen in her life. Despite his incarceration, they have maintained a close father daughter relationship. Marissa visits her father regularly and he helps her maintain her mental health through those visits. I know that he is very supportive of her and that she would be devastated if Marion were to be executed. He would do anything he could in order to make a difference for Marissa and his granddaughter.

7. In addition to providing support to his family, I know that Marion would be a good mentor to younger men. He would teach them to learn from his mistakes and help them to stay on the right path. I know that he volunteers and dedicates his time to others.

8. I love my nephew and I do not want him to be executed. I have already lost my own child and I would be devastated to lose my nephew as well. Although I would love for him to

come home one day, I know that even in prison, that he would stay out of trouble and have a positive impact on those around him. A life in prison sentence would also allow him to continue to have a relationship with the family that loves him so much. Commuting his sentence would be like giving him a second chance. A chance to be there for his daughter and for his new granddaughter.

9. My child, Marion's cousin, disappeared in 2018 and I fear that he may be dead. Even if someone was able to find my son's killer, I would not want that person to be executed. I do not believe that an execution would bring me any sense of justice that a life sentence couldn't provide.

10. I am in support of a conversion or commutation of Marion's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Lorraine Johnson

LORRAINE JOHNSON

Sworn to and subscribed before me
This 3 day of October, 2023

Brie Rust

Notary Public for the State of South Carolina
My commission expires: 5.24.27

Exhibit 30

COUNTY OF ORANGEBURG

STATE OF SOUTH CAROLINA

AFFIDAVIT OF DOROTHY BOWMAN

Comes now Dorothy Bowman, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Dorothy Bowman. I live in Branchville, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. DMB
2. I married Marion Bowman Jr. on December 6, 1999. I had two young sons when I married him. Even though Marion was not their father, he always treated them like they were his own boys. Marion's father wasn't very involved in his life, even when he was young, so it was important to Marion that my boys have a father in their lives. D.M.B
3. Marion was a good husband and a good father. He always provided for us financially and made sure we all had what we needed. He also spent a lot of time with his family - he wasn't always out running in the streets. D.M.B
4. I was pregnant with our daughter when Marion was arrested and charged with murder. Marissa was born September 20, 2001, just two months after he was served with notice that the State was seeking the death penalty against him. Marion has been as good of a father as he could be from prison. He and Marissa have corresponded regularly through letters and phone calls. She used to visit when Marion was located in Ridgeville, but now that he is in Columbia she doesn't get to

see him as often, but she still goes. Marissa will graduate from high school this year and Marion is very proud of her. He has always encouraged her to do well in school and stay out of trouble. D.M.B

5. I was interviewed by someone on Marion's case before his trial, but no one ever asked me to testify for him. I don't know why. I would have liked to share with the jury what a good father Marion was to my boys. D.M.B

Further affiant sayeth naught.

Dorothy M Bowman

Dorothy Bowman

Sworn to me this 7 day of January, 2019.

Notary Public

My commission expires: 2-26-2023

Exhibit 31

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

AFFIDAVIT

Francis Bruce, who appeared personally before me, affirms and states the following:

1. I, Francis Bruce, am over the age of 18 years old and live in Atlanta, Georgia.

2. I am Marion Bowman's maternal aunt; his mother, Denise, is my sister. I have known him all of his life.

3. Marion was a good kid, I never heard of anyone having any trouble with him, and I know that he was a good listener. He especially loved my mother. He would always check on her and would do anything that my parents asked of him. That is just who he is.

4. About four years ago, I lost my own son. It is so hard to imagine losing another young man in our family. I would rather visit my nephew in prison, rather than have to visit him in a graveyard.

5. I know that Marion's execution would really affect my sister, Denise, Marion's mother. It affects your heart to lose a son and I know that firsthand. Losing a son is like losing your heart. I have already seen changes in my sister. Denise isn't as joyful as she once was. She puts on a front and does the best that she can, but when she is able to let her guard down it is clear how much she is hurting. This has also impacted her health. Denise has a lot of medical issues and I am very concerned about her.

6. Marion has changed for the better. I know that religion has become really important to Marion. He participates in the prison ministry and has talked to me about how God and religion gives him hope. We always talk about the Lord together.

7. I lead two prayer lines, one at one o'clock in the afternoon and then another one at seven in the evening. Prayer lines are conference calls that anyone is able to call into in order to receive support and inspiration. We often share scripture with each other, ask for prayers for our loved ones who are suffering, and then we pray together. Marion really wanted to be a part of the prayer line, but we weren't able to arrange that since it would go against prison policy for Marion to participate in a three way or conference call. Instead, Marion always sends scripture to us, so that we can read it during the prayer line phone calls.

8. Marion still plays an important role in our family. He is always calling around to check on everyone. When we talk, he makes sure to ask about my son, Darnell, and my daughter, Angel. If Marion's sentence was commuted to life in prison, then it would give him an opportunity to continue to be present in the lives of his family members. He would still be able to call to check on them and he would be able to provide support from the inside of the prison.

FMB

9. I believe that Marion would do very well if his sentence was commuted to life in prison. I think he would become a better person than he is already. It would further strengthen his faith and he would have a deeper understanding of the power of God. I believe that he would be a good example to others and would share his faith with them.

10. I am in support of a conversion or commutation of Marion's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Frances Bruce

FRANCIS BRUCE

Sworn to and subscribed before me
This 3 day of October, 2023

Brie Rust

Notary Public for the State of South Carolina
My commission expires: 8.24.27

Exhibit 32

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

AFFIDAVIT

Yolanda Bowman, who appeared personally before me, affirms and states the following:

1. I, Yolanda Bowman, am 42 years old and live in Orangeburg, South Carolina.

2. I am Marion Bowman's younger sister. Marion is an incredible, loving, and fun person. He is such a positive presence in our lives.

3. I miss my brother so much. As children, I remember that Marion had to step up to the plate, because of my mother's illness. He always took odd jobs, like helping those in the community do yard work. He always did anything that he could to help his family and those in the community. He always made sure to check on my mother, make sure that she took her medicine, and would make sure that she had food to eat. Because of my mother's health condition, Marion sometimes had to carry her from room to room when she was not able to walk on her own. That is who Marion is as a person. I wish I could have him in my life, but I understand that he will never be able to come home and will never be able to attend family functions with us no matter how badly we want him to be there.

4. We need Marion around as a male father figure. Even though Marion has never had the opportunity to meet my children, he has been influential in their lives. They get excited to talk to him and they listen to him and the advice that he gives them. He always encourages them to do the right thing and stay away from bad influences. He consistently repeats, "the streets have nothing to offer you." When they were younger, Marion always encouraged my children to stay in school, continue their education, and get jobs to help take care of the family. My children are now 18 and 23 years old and still benefit from Marion's advice and support.

5. I know that Marion is very important to his daughter, Marissa. They have a very strong bond that is important to Marissa's life. Even though Marissa was born after Marion went to prison, they have always had a bond that helps Marissa to take care of herself and make important decisions. His advice always has to do with how to be the best person she can be and I know that it has made a positive impact on her life. She always tells me "my daddy says" and "I love my dad." I'm so glad that she can talk to my brother and maintain their relationship. He is a great father even despite the distance between them and has always pushed Marissa to do well in school and work hard.

6. Marissa just had a child and Marion is so excited to be a grandfather. I know he will be a great grandfather and will have a positive impact on his granddaughter's life the way he has had in all our lives.

YB

7. My father has withdrawn since Marion has been gone. They were very close when we were growing up and that has been a significant loss for my father. It really bothers my mother that Marion has been in prison for so long and I fear that she is close to having a nervous breakdown. I have noticed the negative impact that this has had on her health. Similarly, whenever I try to talk to my sister about this, she cries uncontrollably and is also close to an emotional breakdown. I can see that she struggles to face the reality of the situation and misses him tremendously.

8. Marion's attitude is a lot different from before he was detained. He has changed so much and has become a better person. He is now very family oriented and always checks in with us to stay involved in our lives. I have changed in similar ways and know that as you age you mature. He is also always a positive person. Our conversations are always uplifting and I cannot imagine life without hearing his voice.

9. Marion talks about praying and the Lord all the time. This is something that I have noticed as a positive change in his life. He always shares his faith with us when we talk on the phone. He ends our calls with "stay prayed up, keep your head up."

10. I have also noticed the effort that Marion has put into developing as a person and his dedication to continuing to learn and grow. His communication skills and vocabulary have improved so much over the years.

11. Marion also draws and sends me and my family pictures that he knows will make us feel special. He always sends cards to celebrate our birthdays and special events. He writes to us whenever he can, which means so much to me.

12. I believe that Marion has been punished significantly and I feel that a life sentence would be an appropriate punishment for my brother. It's hard for me to watch the news and see that other people who are guilty of similar crimes and are able to go home to their families. Although, I understand that Marion will never be released from prison, if Marion was given a life sentence that would at least allow me to hug my brother, something I have not been able to do in over 20 years. I cannot imagine the joy he would have from a simple hug with me, my mother, his daughter, and granddaughter.

13. It has been emotionally difficult for me to visit my brother in prison, because I can see how hard it is for him and I hate that I am not able to be in the same room as him. I always try to stay strong for him, but it is difficult since it is so painful for me to not be able to just invite him over to spend time with me and my children.

14. I love and miss him so much. I am begging you to find it in your heart to commute my brother's sentence to life in prison. He is so important to us and we would be devastated to lose him. It would be a loss that I'm not sure that I could recover from.

MB

I affirm, under the penalty of perjury, that the foregoing is true and correct.

YOLANDA BOWMAN

Sworn to and subscribed before me
This 26 day of October, 2023

Notary Public for the State of South Carolina
My commission expires: 3.24.27

Exhibit 33

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF ORANGEBURG)

Lena Clark, who appeared personally before me, affirms and states the following:

1. I, Lena Clark, am over the age of 18 and live in Orangeburg County.

2. I am Marion's second cousin on his mother's side.

3. Marion is a nice person who loves to laugh and loves to smile. He is friendly to everyone and I know that his family is very important to him.

4. Marion always writes letters to us, he calls, and makes sure to stay in contact with all of us. When he calls he is always asking about everyone else and checks in to make sure that we are all doing well. We write regularly, a few times per month, and we talk on the phone. When we talk he often shares verses that he has read in the Bible and mentions how important God is to him.

5. Marion is especially close to my daughter, Quanisha. Marion always makes sure to give her good advice. I know that they talk and visit with each other regularly. They each encourage each one another and I believe that they support each other in many different ways. If Marion were to be executed I know that my daughter would be devastated. She would cry a lot and I fear that she would become very depressed. They are best friends and I know that he means a lot to her. I am extremely worried about how his execution would impact her.

6. If Marion were executed it would hurt and be very sad for all of our family. Marion was young when this happened and I know that he has grown a lot since then. Over the years I have noticed that Marion has become more humble and patient. He is more loving and cares very much about how his family is doing. He is very concerned about making sure that no one in his life makes the same mistakes that he made. He has used his experience to encourage others to make better choices.

7. I fear that Marion's death would affect his mother, my cousin, Denise in a very bad way. She is in poor health and I am not sure that she could survive that. Denise is a very loving and caring person and I have seen how important her family has become to her in the face of potentially losing her son.

8. I know that Marion is a good person and not someone who should be executed. Although he will never be able to come home, I would much rather be able to talk to him and visit him, something I would not be able to do if he were executed. I hope that you can find it in your heart to spare his life.

9. I am in support of a conversion or commutation of Marion's sentence to life in prison.

LG

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Lena S. Clark

LENA CLARK

Sworn to and subscribed before me
This 26 day of October, 2023

Brie Rust

Notary Public for the State of South Carolina
My commission expires: 3/24/27

BRIE RUST NOTARY PUBLIC SOUTH CAROLINA

Exhibit 34

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF CHARLESTON)

Gordon Manning, who appeared personally before me, affirms and states the following:

1. I, Gordon Manning, am over the age of 18 years old.

2. I met Marion Bowman through my volunteer work with the East Cooper Baptist Church. We provide ministry to those who are housed on death row. I have been involved in this work since before death row moved away from Lieber in September 2017.

3. I met Marion when he was at Lieber. I visited the prison every Monday night and facilitated a Bible Study session from 6:00 – 8:00/8:30 p.m., but I was only able to interact with the men on death row about once a month.

4. Whenever I see Marion, he always jumps up and comes to the door eager to speak with me. We talk about the Bible, his life, and his workouts. He is always excited about reading and learning. Despite being on death row, Marion never appears to be angry or depressed, which differentiates him from the other men on the row.

5. Marion stands out amongst his peers. While others tend to have a negative outlook when it comes to prison, Marion has always been a positive person. It is easy to connect with Marion and I always look forward to seeing him.

6. Marion is a good guy. He is well behaved and kind to others. It is apparent to me that Marion is very proud of all of his accomplishments. He skips to his desk in order to get his work for our Bible Study sessions and then skips back to the door in order to share his work with me.

7. Unfortunately, due to the COVID virus, our Bible Study sessions were suspended and have not yet resumed at this time.

8. I am in support of a conversion or commutation of Mr. Bowman's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Gordon Manning
GORDON MANNING

Sworn to and subscribed before me
This 6 day of September, 2023
Notary Public for the State of South Carolina
My commission expires: 3-29-26

Exhibit 35

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF RICHLAND)

Larry Tyree, who appeared personally before me, affirms and states the following:

1. I, Larry Tyree, am an ordained minister. I am 67 years old. I have served as a volunteer chaplain for the death-sentenced inmates in South Carolina for the last 14 or 15 years. I met Marion Bowman early in my death row ministry and I consider him a friend. We talk about ministry and religion but we also talk about just about everything.

2. When the row was at Lieber, the warden there allowed me to bring in books for the guys to read. I started a reading program and brought in all sorts of books, including a lot of history books about WWII. I also brought in Lauren Hillenbrand's Unbroken and books by Hampton Sides. They were so popular there was a waiting list for guys to get the books. When I visited the guys on the row, they would talk with me about the books. It was through the discussions around the reading program that Marion and I became good friends.

3. When death row transferred from Lieber to the Maximum Security Unit at Kirkland, I continued to visit there, even though the conditions were about as close to hell as you can get. I have also continued my visits since the transfer of death row from Kirkland over to Broad River. My visits have been pretty regular on a weekly basis except for brief periods where I might miss a couple of weeks due to health problems or other issues.

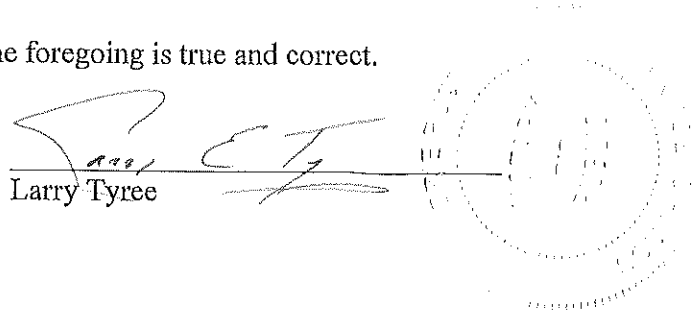
4. Other volunteers who visit death row when I do are James Bradham, Ken Ritchie and Bob McCallister.

   I really enjoy talking to Marion. He is one of the funniest people I know. We talk about just everything without secrets. When I visit, Marion will always hug me and we'll talk about 2 hours each time. While I like most of the guys on the row, I don't hug them and there are a few that I won't even shake hands with because they might have a razor blade in their hand. Marion is not one of them. I also hug him.

5. I consider Marion to be a good friend and a good person. He likes to talk about basketball and just about everything going on in his life. Marion is the first person to step in to break up a fight.

6. I whole heartedly support a conversion or commutation of Mr. Bowman's sentence to a life sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.



Larry Tyree

Sworn to and subscribed before me
This 12 day of October, 2023

Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 36

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF RICHLAND)

Bob McAlister, who appeared personally before me, affirms and states the following:

1. I, Bob McAlister, am the President of McAlister Communications. For the past thirty-five years, I have volunteered at the South Carolina Department of Corrections, leading Christian Bible studies with inmates in various facilities in the Department. My ministry has included volunteering on South Carolina's death row. Currently, I volunteer on death row every other week, conducting a Bible study, leading religious discussions, and holding Christian worship services.

2. Through this death row ministry, I met Marion Bowman approximately five years ago, in 2018 or 2019.

3. Marion Bowman faithfully attends the Bible study and worship services every time I am there. Mr. Bowman is very quiet and respectful. He does not complain about his plight (like many others do) and is very polite. He is, instead, focused on the present and the Lord. Through our interactions, I have come to recognize Mr. Bowman as a humble man who is a born again Christian.

4. Mr. Bowman is very dedicated to the worship service and is an active participant. He often leads us in singing at the end of the service. I regularly ask him to close the service by singing *Amazing Grace*.

5. Talking to Mr. Bowman is like talking to anyone outside the Department of Corrections. I have not detected any major psychiatric problems or issues in my interactions with him.

6. I do not believe Mr. Bowman would be a risk if he were transferred to the general population. I would go so far as to say that, if he had the right infrastructure on the street, he would not be a risk to society, but certainly no risk in the Department of Corrections general population. In fact, Mr. Bowman is one of the few people I've met in the Department of Corrections who, if he were released, I would invite over to spend time with my family.

7. Mr. Bowman is thoughtful of others. My wife sends birthday cards to the men on death row. Though Mr. Bowman has never met her, he greatly appreciates her sending the cards and asks me how she is doing when I meet with him.

8. Overall, I would describe Mr. Bowman as a humble, sweet man. I believe he has characteristics that would lead to Mr. Bowman being successful in a general population setting, including humbleness, politeness, a quiet nature, and a pleasant demeanor.

9. I support a conversion or commutation of Mr. Bowman's sentence to a life sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

BOB MCALISTER

Sworn to and subscribed before me
This 11 day of July, 2023

Notary Public for the State of South Carolina
My commission expires: 9/8/2030

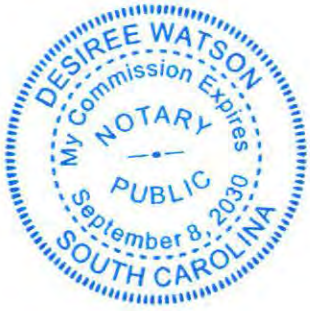


Exhibit 37

COUNTY OF BEAUFORT)
)
STATE OF SOUTH CAROLINA)

AFFIDAVIT OF SHANNON BRADLEY BROWN

I, Shannon Brown, being duly sworn, do state:

1. I am a currently a resident of Beaufort County, South Carolina.

2. I am at least eighteen years of age.

3. I currently work as a Reading Interventionist for Catapult Learning. I am a retired teacher and taught public school in South Carolina for 26 years.

4. I first met Marion Bowman when I was helping my husband at his law office in 2007. My husband represented Marion in his Capital PCR. I helped in the office doing small tasks such as answering the phone and organizing files.

5. Marion would call the office for updates and he and I would always talk about our families and our lives.

6. He was always very easy to talk with and had a great sense of humor. He and I had a common interest in football, so we would talk every week about what was happening with SEC football. We would catch up every week to lament about how bad Alabama football was that year.

7. Marion soon became an Alabama football fan and every year he sends me a Christmas card that says "Roll Tide!" It was very meaningful to me that he became an Alabama fan because I know there is no way he grew up in Branchville, South Carolina, rooting for Alabama. He is a people person with a huge heart and a positive attitude. He cheers for Alabama out of friendship for me.

8. Marion has a daughter who is the absolute love of his life. When she was just a little girl he told me that anything his daughter wants, he does what he can to get it for her. Once they were talking on the phone and she started begging him for a swimming pool. He said he finally told her, "Of course you can have a swimming pool." He has never for one second let prison walls keep him from doing everything he could to be a meaningful presence in her life. There is a saying that a man does not have to be a perfect person to be a perfect father. Marion Bowman has been the best father he could be given his situation.

9. Marion now has a granddaughter and being a grandfather means everything to him. He told me that one day I will understand how wonderful grandchildren are. He said things that he would never have told his daughter she could not have, but he would definitely let his granddaughter have anything. He says that his granddaughter is still a baby but she is

one of the smartest babies he has ever seen. He loves her and I know his daughter loves Marion if she brought him to death row to visit him.

10. Marion's daughter coming to visit him and bringing a baby speaks volumes about his kind and gentle nature. It also speaks volumes about the type of dad he was and still is to his own daughter.

11. One of the mitagation experts who worked for my husband gave me a little background information on Marion. When he and his sisters where very small children, his father was physically abusive to his mother. The final straw for his mother was when his father punched out her front teeth with brass knuckles. His mother gathered the children into their red wagon and left for good. She left with nothing except her children and the clothes they were wearing. Despite having a negative role model for a father, he is a loving and supportive father to his own child.

12. Marion attended GED classes before his arrest and his teacher told our mitagation expert that he would stay after every class and help her gather all the books and clean the room. For a teenage boy to ever stay at school longer than he has to and actually help organize and clean up is very rare. I taught school for many years and it's not common for teenage boys to even say, "Goodbye, have a nice day," much less stay late and help clean.

13. I met Marion's mother during a hearing and she told me Marion and the victim in this case (Kandee Martin) had been friends their entire lives. She said they were boyfriend and girlfriend as children and were always very close. She said Marion loved her.

14. Marion has always said he did not kill Kandee Martin. I am not a lawyer but I do know that Marion Bowman did not have very good representation at his trial. He had a lawyer who referred to him repeatedly as a "big black man" and to Kandee as "a little white girl." Marion is a tall man, but he was actually younger than Kandee. These descriptions were and are still inflammatory, racist and grossly inaccurate.

15. I went to visit Marion in November 2024, and he was just as funny and sweet as he always has been. He is extremely well spoken and articulate. I do believe his time in prison has actually given him the only stability he has every had in his life. He took a horrible situation and made himself into the best person he could be. He has never said a negative thing about anyone to me ever. He is always happy and upbeat even though I know he has to be very scared right now.

16. Marion has somehow found a calmness in this situation; has a strong spirit and strong trust in the Lord. He has never shown self pity and is probably the most spiritually strong person I have ever met.

17. He is not a threat to anyone inside or outside of prison. He has friends incarcerated with him who love him. His family loves him, as well as his legal team. The warden and guards are also very fond of him and from what I saw at the prison last month, they treat

him with so much respect. This is a clear example of the kind of person Marion Bowman is.

18. I do not believe executing Marion Bowman will serve any real purpose except to upset all of us who love and care about him. Executing him will not bring anyone closure, it will only bring more discontent and sadness. I do not believe anyone, much less an imperfect legal system, should remedy violence with more violence. Please spare his life for all of us who care about him.

5. I make this statement of my own free will and accord, absent any coercion or duress.

Shannon Bradley Brown

December 16, 2024

Shannon Bradley Brown

On the 11th day of Dec, 2024, Shannon Bradley Brown appeared before me and being duly sworn executed the foregoing Affidavit.

Jessica Roper

Notary Public for the State of South Carolina
My Commission Expires: 01/08/2034

JESSICA ROPER
Notary Public-State of South Carolina
My Commission Expires
January 08, 2034

Exhibit 38

AFFIDAVIT OF KIMBERLY N. FUHRMEISTER

STATE OF NORTH CAROLINA)
) AFFIDAVIT
COUNTY OF MECKLENBURG)

I, Kimberly Fuhrmeister, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

1. I am employed with the Federal Public Defenders Office for the Western District of North Carolina as an Investigator / Mitigation Specialist in the Capital Habeas Unit. I have held this position since July 2021.
2. In the regular course of my duties, I identify, locate, and interview witnesses.
3. On April 15, 2023, I spoke briefly with Vaughn Jackson at his home in Chapin, SC. Mr. Jackson was employed as the Deputy Warden at Kirkland Correctional Institution, and later worked at Broad River Correctional Institution. Mr. Jackson is now retired.
4. In the course of my April 15th conversation with Mr. Jackson, he told me that Marion Bowman Jr. was a model inmate and his behavior was good. It was not a good time for him to talk, so we agreed to follow up in the future.
5. On April 17, 2023, I followed up with Mr. Jackson via telephone. Mr. Jackson told me that Mr. Bowman served as an inmate representative and was one of the leaders on death row.
6. As the inmate representative, Mr. Bowman was tasked with representing the other inmates by discussing with the prison administrative staff about any problems, complaints, and issues the inmates were having on death row. Marion held this position for about two years and did a good job.

7. He described Mr. Bowman to me as the type of person to go out of his way to help anyone who needed it.
8. Mr. Jackson was aware that Mr. Bowman's family has always supported him and he knew that Mr. Bowman's family visited with him when they could.
9. Mr. Jackson told me that, in his opinion, Mr. Bowman would do fine in general population if his sentence were to be commuted to life in prison.
10. The information contained in this affidavit is an accurate representation of the information discussed during both of the conversations that I had with Mr. Jackson.

Further affiant sayeth naught.

KIMBERLY FUHRMEISTER

Sworn to and subscribed before
me this 16th day of December, 2024.

Bhautik Dudhat
NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 07/01/2029

Exhibit 39

AFFIDAVIT OF STACY FERRARO

STATE OF MISSISSIPPI)
) AFFIDAVIT
COUNTY OF HINDS)

I, Stacy Ferraro, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

1. From August 2022 until March 2023, I was employed with the Federal Public Defender's Office for the Western District of North Carolina as an assistant federal defender in the Capital Habeas Unit for the Fourth Circuit. In March 2023, I took a position as a research and writing attorney at the Federal Public Defender for the Southern District of Mississippi in Gulfport, Mississippi. Currently, I am in private practice as an attorney and a mitigation specialist in Jackson, Mississippi.
2. While employed in North Carolina, I conducted several interviews of individuals who previously worked for the South Carolina Department of Corrections (SCDC). The purpose of the interviews was to determine the staff's observations of Marion Bowman Jr., who is currently on death row and facing execution. I also inquired about their opinions concerning how he would adapt to incarceration in general population.
3. On March 14, 2023, I met with Mr. Eddie Berry Jr. for a pre-arranged interview.
4. Mr. Berry told me that he was employed by SCDC from 2009-2014. He spent two of those years working on death row at Lieber Correctional Institution. Mr. Berry's duties as an officer included regular interactions with all of the men on death row, including my client Mr. Bowman.

5. Mr. Berry told me that he enjoyed working on death row, partly because it was a quieter, and therefore, an easier environment in which to work.
6. Mr. Berry described Marion Bowman Jr. as no trouble. He did not recall any time when Mr. Bowman broke the rules, nor did he recall any disciplinary infractions.
7. Mr. Bowman, in his opinion, was social and got along well with other inmates and guards. He remembered that they would laugh, talk, and joke together. Some of their conversations were about the Bible and Mr. Bowman's dreams, which were religious in nature. They also talked about sports. Mr. Bowman exercised, and they would talk about their workouts together.
8. Mr. Bowman affectionately referred to Mr. Berry as "Big 400." Mr. Berry and Mr. Bowman stayed in contact after Mr. Berry left SCDC. During our interview, Mr. Berry told me that he spoke with Mr. Bowman as recently as two or three weeks ago.
9. Mr. Berry was aware of the circumstances of the crime for which Mr. Bowman received a death sentence.
10. Mr. Berry told me that he wanted to help Mr. Bowman however he could, and never expressed any concern over Mr. Bowman's ability to adapt to general population should his sentence be commuted to life in prison.
11. Unfortunately, Mr. Berry died on March 19, 2023.
12. The information contained in this affidavit is an accurate representation of the information discussed during my interview with Eddie Berry Jr.

Further affiant sayeth naught.

STACY FERRARO

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 379610
BRANDI NORTH
Commission Expires
Oct. 4, 2027
RANKIN COUNTY

Sworn to and subscribed before
me this 16 day of December, 2024.

NOTARY PUBLIC FOR MISSISSIPPI
My Commission Expires: 10-4-27

Exhibit 40

AFFIDAVIT OF STACY FERRARO

STATE OF MISSISSIPPI)
) AFFIDAVIT
COUNTY OF HINDS)

I, Stacy Ferraro, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

1. From August 2022 until March 2023, I was employed with the Federal Public Defender's Office for the Western District of North Carolina as an assistant federal defender in the Capital Habeas Unit for the Fourth Circuit. In March 2023, I took a position as a research and writing attorney at the Federal Public Defender for the Southern District of Mississippi in Gulfport, Mississippi. Currently, I am in private practice as an attorney and a mitigation specialist in Jackson, Mississippi.
2. While employed in North Carolina, I conducted several interviews of individuals who previously worked for the South Carolina Department of Corrections (SCDC). The purpose of the interviews was to determine the staff's observations of Marion Bowman Jr., who is currently on death row and facing execution. I also inquired about their opinions concerning how he would adapt to incarceration in general population.
3. On March 9, 2023, I spoke with Mr. Stanley Burtt Jr. at his home in Summerville, South Carolina. Mr. Burtt was employed with the South Carolina Department of Corrections until his retirement on January 2, 2008.
4. Mr. Burtt worked with the death row population, including my client, Marion Bowman.

5. Although Mr. Burtt expressed that he did not remember much given the amount of time that had passed, he did remember Mr. Bowman as someone who was no trouble. He had no memory of Mr. Bowman ever attempting an escape.
6. The information contained in this affidavit is an accurate representation of the information discussed during my interview with Stanley Burtt Jr.

Further affiant sayeth naught.

STACY FERRARO

Sworn to and subscribed before
me this 16 day of December, 2024.

NOTARY PUBLIC FOR MISSISSIPPI
My Commission Expires: 10-4-27

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 379610
BRANDI NORTH
Commission Expires
Oct. 4, 2027
RANKIN COUNTY

MR. BAILEY: After the death penalty notice was served on the defendant in this case, I'd extended an offer to allow Mr. Bowman to plead to a life without parole sentence. I gave them a period of time, I don't recall specifically how long it was, they did not accept it. I then withdrew the offer.

When we got the evaluation back saying that he was competent and so forth and ready to go to trial, I renewed the offer one more time and he again rejected that. I don't have any idea that they're going to accept that offer now, I'm not going to leave that open indefinitely because we're going to be starting some intensive preparations and I don't like to prepare a case for trial and then plead at the last minute.

THE COURT: I understand that, Mr. Bailey.

MR. BAILEY: But I am going to go ahead and open that offer up one final time for a two-week period starting today, and the same offer I made previously. If it's not accepted, then I'm going to irretrievably revoke that offer and it will not be made again.

THE COURT: All right. Let us all be very

aggravating factors.

I would just defer to my colleague whether or not if he knows anything else that's not out here, I'm sure he would discover it according to our rules, ma'am.

THE COURT: Thank you.

MR. BAILEY: That's correct, Your Honor, I do have an open file policy. Mr. Cummings and Ms. Hardee and I have gone over all the evidence in the possession of the sheriff's office and he has everything I've got. If anything comes to light between now and the time of trial, I'll immediately fax both of them a copy of it.

As I read their motion number one, it's specifically addressing DNA evidence, and we have discussed that. Previously Matthew Fitts of SLED did the DNA work on this. And my understanding is that they've hired a defense expert that may or may not testify, Mr. Ostrowski, who has already got the SLED protocols as part of a motion to produce. And I mailed -- I recently received from Mr. Fitts the stuff that was case specific as far as DNA and I've mailed that to the defense and they should have this in their offices by today or Monday at

discovery itself, but the cover letter itemizing and describing the discovery. And I would do that again in this case.

I do have a problem with copying my entire file even if it's sealed. I mean, at some point it's going to be unsealed. And my open file policy applies to whatever I get from law enforcement or other sources, it doesn't include my private notes and that type thing, impressions I might write down.

THE COURT: Sure. Surely. Your work product.

MR. BAILEY: I would object -- that's correct, Your Honor. I would object to having my work product sealed up somewhere to be opened up. Could be misinterpreted at some point.

THE COURT: Surely.

MR. CUMMINGS: That's one of the dilemmas we have, Judge. I can't argue today what's going to happen in the future of one of the issues that we've always been requested by appellate defense and other people that are academics on this issue, is to make sure they get the entire reason -- probably it is more subjective than it is argumentative as to the

A. Yes.
Q. Did either you, or the sheriff while you were there, make any promises to Mr. Bowman if he would give you a further statement?
A. No.
Q. Any threats made, any physical abuse, verbal abuse, anything of that nature?
A. No, sir.
Q. Okay. And I would ask whether or not Marion Bowman said anything in your presence?
A. Yes, he did.
Q. And also in the sheriff's presence?
A. Yes.
Q. All right, sir. And using the best of your recollection, was whatever he told you given to you freely and voluntarily?
A. Yes, it was.
Q. Okay. What do you recall him saying?
A. Sheriff Williams did most of the talking to Marion. And I remember Marion saying that James Gadson and Terry Kelly had told him that they shot Kandee Martin. According to Marion, James had shot Kandee once and Terry shot Kandee twice with a .38 pistol.

He went on to say that the -- one of them got the pistol from Woody's Pawn Shop and that after they

Q. All right. We got the microphone. You and I are talking and I am hearing you just fine, we just need everybody to be able to hear you, Mr. Bazzle.

Now, when you were back in the jury room you were given a list of potential witnesses, this document. I hand it to you if you need to review it again. And I would ask you, first of all, did you have a chance to review that document?

A. Yes, I did.

Q. All right. And are you related by blood or marriage, acquainted with, do you have a personal acquaintanceship or relationship, a business association or relationship, and are you connected either directly or indirectly to any of the individuals on that list?

A. No, I'm not.

Q. All right. Now, let me look at this. Mr. Bazzle, my notes indicate that yesterday when we asked whether or not you had any opinion or had seen or read anything about this case, or had any bias or prejudice for or against either side, that you did not indicate that any of those things applied to you; is that right?

A. Well, I had a problem with, you know, some people.

Q. You have a problem with some people, okay. And tell me what you mean by that.
A. I don't get along with people of color too well.
Q. You don't get along with people of color too well, okay. And what do you mean when you say, "people of color"?
A. Blacks, mixed.
Q. All right. Black, African-Americans. When you say mixed, are you talking about interracial individuals, folks?
A. Yeah.
Q. All right, sir. And I think that you may have actually indicated that on your questionnaire; is that right?
A. Yes, ma'am.
Q. All right. So are you telling me that you have concerns about having a bias or a prejudice in this case because Mr. Bowman is an African-American, you think that?
A. Yes, ma'am.
Q. And do you think that that opinion that you hold might, or could, interfere with or substantially impair your duties as a juror?
A. Yes, I do.
Q. All right, sir. Very well.

concern themselves with punishment. Punishment is a matter in the criminal court most of the time that's left up to the judge. But there is one case in our law when a jury has to deal with the matter of punishment and that is in a case like this one. It is in a case where an individual has been charged with the crime of murder and where the State is seeking the death penalty.

If an individual in a death penalty case is convicted of the crime of murder, then the same jury that convicted him or her returns and in a separate and different proceeding decides the punishment that that person will get. There are two kinds of punishment that they would consider. One is a life imprisonment without the possibility of parole and the other possible punishment is the death penalty. That decision, the decision on penalty is determined in that second part, or the sentencing phase as it is called.

A. Right.

Q. Do you understand this information?

A. Yes.

Q. And do you have any questions about that information?

A. No, I understand.

sheriff's office in this case. And beside him is Darlene Simmons who also works for the solicitor's office, she'll be helping us out.

I want to thank you all for your patience and for being here and going through this kind of grueling week-long qualification process. As you all know by now Marion Bowman, Jr. seated at the other counsel table is charged with the murder of a young woman named Kandee Martin. Kandee Martin was 21 years old, she lived in Branchville, which is a few miles on the other side of the Dorchester County line in Orangeburg County. Marion Bowman is also charged with arson in the third degree.

And I know a couple of you all have had some previous jury service, but I can assure you that this case is the most important case that you will ever sit as a juror on, and indeed any juror can ever sit on. So as the judge says, it demands your strict attention throughout the trial and I would ask you to please pay close attention to everything that takes place here.

The judge earlier read the two indictments. And she explained to you the

DIRECT EXAMINATION

BY MR. LAFOND:

Q. Good afternoon, Mr. Fogle. As you know, my name's Benji Lafond and I work with Mr. Bailey here at the office. Can you please tell the jury where you live?

A. I live at [redacted], Branchville, South Carolina.

Q. Do you know the defendant, Marion Bowman?

A. Yes, sir. I do.

Q. Can you, please, point him out for the jury? Can you describe him, what is he wearing?

A. The fellow in the green, green jacket, white shirt, tie.

Q. Okay. Does Mr. Bowman have a nickname that you commonly use for him?

A. Yes.

Q. What's that nickname?

A. Black.

Q. Okay. How long have you known Mr. Bowman?

A. About five years.

Q. Are you close friends with him?

A. Yes.

Q. Okay. Do you know James Taiwan Gadson?

A. Yes.
Q. And could you point him out for the record, please?
A. Over there.
Q. Okay.
THE COURT: Remember, keep your voice up for me, please.
Q. Okay. Just if you would, Mr. Rivers, just talk loud where I can hear you, then these jurors on the end can hear you, okay?
A. Okay.
Q. Can you describe him? Just for the record can you point towards his table over here? How is Mr. Bowman dressed?
A. How is he dressed?
Q. Yes, sir.
A. He has a suit and a tie on.
Q. Okay. All right. How long have you known Marion Bowman?
A. I guess ten years, 11 years.
Q. All right. And does he have any nicknames that he goes by in the Branchville area?
A. Black.
Q. Okay. Any other nickname?
A. J. R.

A. A green suit.
Q. Okay. White shirt?
A. White shirt, tie.
Q. Okay. All right. How long have you known Marion Bowman?
A. For four years.
Q. Okay. Now, does Marion have a nickname?
A. J. R.
Q. J. R. Does he have another nickname?
A. Black.
Q. And people in Branchville refer to him by either one or both of those nicknames?
A. Yes, sir.
Q. Okay. And how about James Taiwan Gadson, do you know him?
A. Yes, sir.
Q. How long have you known him?
A. Four years also.
Q. Okay. And Travis Felder, do you know him?
A. Yes, sir.
Q. How long have you known Travis Felder?
A. Four years also.
Q. Okay. Call your attention to Friday, February the 16th, 2001, and ask whether or not you were home that day?

all those things in front of the jury.

THE COURT: I understand. What items are we talking about?

MR. BAILEY: Your Honor, these are five separate items, they were collected by Agent Helms from the trunk of the automobile. The significance of these items is they were collected by Agent Helms, they were sent to the SLED arson lab, Mr. Helms delivered them to the SLED arson lab. I'll wait for the train.

(Train.)

MR. BAILEY: Your Honor, what they consisted of was a burned pocketbook, a burned shirt from the victim, some burned books from the trunk, a burned belt and earring and some other miscellaneous, burned debris out of the trunk of the automobile. They were sent to SLED and were analyzed by Alex Layton who is a SLED arson chemist. Mr. Layton's on our witness list and he would testify that all these items had petroleum accelerants in them. Which Mr. Cummings, of course, is not consenting to chain of custody as we know and it's necessary for me to have him identify this and get the chain of custody documentation in order to lay the

A. I went further up the road and turn around.
Q. And where did you park?
A. I came back. As I turned around I came back and parked in the middle of the road.
Q. Okay.
A. He was already up in here.
Q. All right. You can go ahead and have a seat now.
A. (The witness complies.)
Q. Okay. After he went up in that little field as you've described, you stop your car in the road, what's the next thing you saw?
A. I seen him get out the car, he lit something, threw it in the car, the car was on fire.
Q. Okay. What happened then?
A. He got in the car, we went --
Q. Got in what car?
A. He got in my car.
Q. Okay. You're still behind the wheel of your car?
A. Yes, sir.
Q. Okay. What happened after you got in the car?
A. I said, "Black," I was referring to Mr. Bowman, I said, "Man, I don't want nothing to do with this." He said, "Travis, I ain't get you

Q. Sitting beside Mr. Cummings there in the --
A. With the green suit on.
Q. Blue/green coat, okay. Ms. Bowman, I want you to tell the jury whether or not you have criminal charges pending against you for accessory after the fact of murder?
A. Yes.
Q. Okay. And are you aware that you could, with those charges, go to prison?
A. Yes.
Q. Okay. And do you have a lawyer that represents you on those charges?
A. Yes.
Q. Who is that lawyer?
A. Mr. Kenneth Cooper.
Q. Okay. And is Mr. Cooper here in court today?
A. Yes, sir.
Q. Okay. And through your lawyer, Mr. Cooper, have you worked out a plea agreement with the State of South Carolina?
A. Yes, sir.
Q. Okay. And under that plea agreement are you going to get a probationary sentence if you testify truthfully?
A. Yes, sir.

you to answer my questions and there's an important reason to answer these questions in here.

Ms. Bowman, you stopped there. There's how many other people at Fralix's house?

A. I don't remember how many people was there. I seen some people, though.

Q. Yes, ma'am. Did you see anybody drinking there?

A. No. I wasn't paying that close attention what they was doing.

Q. You didn't see anybody walk out to the cars with beer cans or anything?

A. No.

Q. You didn't see anybody out there that you remember today? I mean, this is very important today.

A. Did I see anybody that I remember?

Q. Yes.

A. I saw Charlie and Kandee.

Q. Okay.

A. And I seen other people, but I don't remember who they was.

Q. Your brother and Kandee were friends; were they not?

A. Kandee was everybody's friend.

Q. Yeah. And then that day, the first statement

we're dealing with this area, this type of objection. I have an open file policy, I've given Mr. Cummings everything that I've got. However, I have gone back and interviewed witnesses that have given statements and perhaps witnesses that have not given statements. And I have talked to them and I've gotten information that may be in addition to anything that they had in their statements. And I have not divulged my personal contact of these witnesses to Mr. Cummings and I'm not aware of any precedent that says that I have to.

THE COURT: Neither am I.

MR. BAILEY: If someone has a conflicting statement then I would tell him, but if it's just adding to it, giving additional detail, then, you know, he has --

THE COURT: This is not a civil case as I understand it, clearly. This is a criminal case. Counsel has had benefit of statements, he's had benefit of witnesses, addresses, telephone numbers. I think that I'm not concerned about the issue that he raises. Thank you.

MR. BAILEY: Thank you, Your Honor.

identification as State's 21, the two envelopes for identification as State's 48 and 49, and ask if you're familiar with these?

A. Yes. These are swabs that we take from the vagina, and we draw blood and other fluids. And these are documented and signed and documented on this form which is an evidence transfer form. And it shows what we took and it shows who picked it up and when.

Q. All right. And with respect to the document, first of all for the record State's, for identification 21, does that bear your signature on that?

A. Yes, sir.

Q. Okay. Dr. Ross, does that indicate that on February the 28th, 2001 that you turned over the items listed on this document which included the victim's blood and the vaginal and other swabs to Laurie Shacker of the State Law Enforcement Division?

A. Yes, sir. It's Laurie Shacker of SLED.

Q. All right. And during the period of time between February the 17th, 2001 and February the 28th when you turned that over, was that maintained in a secure location within your facility?

A. It was locked in our office, yes, sir.

qualified doctor of when the seminal fluid could have been placed in there; is that correct?
A. That's correct.
Q. And there's no way to determine when seminal fluid had been placed inside a body cavity?
A. Within days, I mean.
Q. Right. So it's within some time. From your findings, Doctor, did it appear that it had been over several days?
A. I didn't find any sperm, that doesn't -- that means that there weren't -- there may have been somebody who had a vasectomy, for instance.
Q. Yes, ma'am. I'm not asking whether it was --
A. So there was nothing there to tell me, document the time of the seminal fluid.
Q. Could have been placed there, yes, ma'am.
A. Yes, sir.
Q. And then, Doctor, one of the most important things I care to ask you about is when you -- obviously when you did the work that you did and thoroughly did your examination of this young lady, Doctor, you did not find any carbon dioxide or CO_2 in her lungs when you examined her; is that correct?
A. That's correct.
Q. So in other words for us layman in particular,

A. Yes.
Q. Okay. Who is that lawyer?
A. Mr. Gene Dukes.
Q. Okay. Is Mr. Dukes seated out here in the audience?
A. Yes, sir.
Q. Okay. And through Mr. Dukes, through his representation, you have entered into a plea agreement with the State of South Carolina; have you not?
A. Yes, sir.
Q. Okay. And would you tell the Court and the jury what that agreement is, your understanding of that agreement?
A. Accessory after the fact and misprision of a felony.
Q. All right, sir. And are you going to get a negotiated sentence of 20 years for that?
A. Yes, sir.
Q. Okay. And in exchange for that, dropping the murder charge and allowing you to plead to accessory after the fact of murder and misprision of a felony and receiving a 20-year sentence, have you agreed to testify truthfully in this case?
A. Yes, sir.

did you go?
A. On a little dirt road.
Q. Okay. What happened when you got to the little dirt road?
A. Parked the car in a wooded area behind the coal plant.
Q. And what, if anything, did Marion Bowman say to you when y'all drove into Branchville and parked the car?
A. He said if I told anyone he was going to blow my brains out.
Q. All right. Say it real slow and loud so she can take it down, okay?
A. He said if I would have told anyone he was going to blow my brains out.
Q. Okay. What did you do after he parked the car in Branchville? Where did you go?
A. He got out and went to the villa projects.
Q. Okay. And did you go to the villa projects, too?
A. I went behind Hank Koger house.
Q. You went to Hank Koger's house?
A. Yes.
Q. What did you do after that?
A. We sat in the yard. He went and got his sister

club, what club are you talking about?
A. Allen Murray.
Q. Okay. And who went down to Allen Murray's Club?
A. Me, Darian Williams, Hiram Johnson, Marion Bowman.
Q. Okay. And how did y'all get from Branchville to Bowman where Allen Murray's Club's located?
A. Kandee Martin car.
Q. Okay. Who drove?
A. Marion Bowman.
Q. Where were you riding?
A. Passenger side.
Q. Front or back?
A. Front.
Q. Where was Darian Williams and Hiram Johnson sitting?
A. Back seat.
Q. Okay. And after you all got in the car, what, if anything, occurred?
A. He had -- he handed out four pair of brown gloves.
Q. Who did?
A. Marion Bowman.
Q. Hang on a second. Let he hand you State's 45, let me ask you to look inside that bag, see what's in

there.
A. (The witness complies.) Yes.
Q. Does that appear to be the kind of gloves that you all were wearing?
A. Yes.
Q. Okay. All four of y'all put on these brown cotton gloves?
A. Yes, sir.
Q. Who did you get the gloves from?
A. Marion Bowman.
Q. Did Marion Bowman say anything about the fact that y'all were in Kandee Martin's car?
A. No.
Q. Was there any conversation between Marion Bowman and you or anybody else as y'all drove from Branchville to Allen Murray's Club?
A. No, sir.
Q. Okay. Do you know roughly what time y'all got to the Allen Murray Club?
A. Approximately twelve o'clock.
Q. Okay. And when you got to the club, what did you do?
A. I went inside the club.
Q. Okay. And what about Hiram Johnson or Marion Bowman?

A. They was sitting outside in Yolanda Volkswagen.
Q. How about Darian Williams, did he stay outside the parking lot or go inside?
A. He was in the club.
Q. Went to the club with you?
A. Yes. Travis Felder, too.
Q. How long do you think you were inside the club?
A. About an hour.
Q. Okay. And about an hour or so and then you came out?
A. Yes.
Q. And would you state whether or not you saw Marion Bowman after you came out?
A. Yes.
Q. What was he doing?
A. Sitting in Yolanda Volkswagen.
Q. Okay. Now, at some point you left the club?
A. No, sir.
Q. I mean, you never -- at some point you had to have left, right, you're not still there?
A. We left like two o'clock.
Q. All right.
A. After I came out of the club we did.
Q. Okay. Well, what happened between the time you came out of the club and the time you left?

A. When I came out the club, Marion Bowman and Hiram Johnson was sitting in the Volkswagen, I got in the back seat and laid down.
Q. Okay. By this time, Mr. Gadson, how much had you had to drink?
A. That was from drinking all day. I was done drinking then.
Q. Were you drunk?
A. Near about.
Q. And you laid down in the back seat of Volkswagen?
A. Yes, sir.
Q. Okay. And after that y'all left the club?
A. Yes, sir.
Q. All right. And whose car did you leave in?
A. Kandee's car.
Q. Who was driving?
A. Marion.
Q. Okay. And where were you sitting?
A. In the back seat.
Q. Okay. Who else was in the car?
A. Darian Williams and Hiram Johnson.
Q. Okay. Did y'all go back to Branchville?
A. Yes, sir.
Q. Okay. When you got to Branchville where did you

go?
A. Villa projects.
Q. Okay. And whose apartment did you go to there?
A. Meeka, Apartment [redacted].
Q. You gave a statement to the deputies on February the 18th, didn't you, 2001?
A. Yes.
Q. Said you didn't know anything, right?
A. Yes.
Q. That wasn't true, was it?
A. No.
Q. Why did you lie?
A. Scared.
Q. Mr. Gadson, I want you to answer any questions Mr. Cummings has for you, please.
A. All right.

THE COURT: Cross-examination, Mr. Cummings.

MR. CUMMINGS: Thank you, Judge.

CROSS-EXAMINATION

BY MR. CUMMINGS:
Q. I want to make sure you hear everything I've got to say on questions, right? And you'll tell me, son, if you don't understand my questions, right?
A. Yes, sir.

Q. Okay. Did not see Miss Martin?
A. No.
Q. Then it's your testimony, and I want to ask you this, how did it come to be that Miss Martin was in your presence?
A. How was she in my presence?
Q. Yeah.
A. When I seen her at 7:30.
Q. Where did you see this lady?
A. Driving the car.
Q. Where was she?
A. In the projects.
Q. In the projects?
A. Yes.
Q. Miss Martin was friends with all of you, right?
A. Yes.
Q. Okay. When you see Miss Martin everybody got in the car, everybody went to the EZ Shop was it, Horizon gas station?
A. Marion Bowman was already in the car when he came in the project.
Q. Okay. Went up there, went to the station, got some gasoline?
A. Yes.
Q. Drove off without paying for the gasoline?

A. Yes.
Q. Between those two times did you see Marion Bowman?
A. I seen him at the club when I got there.
Q. Okay. All right. And when you saw Marion Bowman at the club, where was he, inside or outside?
A. He was on the outside of the club.
Q. Okay. And what was he doing outside the club?
A. They were standing around by his sister car.
Q. Okay. And you left the club at about what time?
A. About 2:30, quarter to 3:00.
Q. All right. Again, how did you leave the club, who were you with?
A. I left with Travis Felder and Valorna Smith.
Q. Okay. And where did you all go?
A. We went to the store, the EZ Shop. And then we went from there to Valorna's house.
Q. All right. Do you wear a watch?
A. No, sir. I don't.
Q. Okay. Do you know roughly what time it was by the time you all got back to Branchville?

MR. CUMMINGS: Judge, I want to object. This young lady was on the stand yesterday and asked these same questions. Again, I don't think this is proper recall on this issue.

MR. BAILEY: If I can be heard.

MR. CUMMINGS: I may be mistaken.

MR. BAILEY: Your Honor, she answered those questions in response to Mr. Cummings' cross-examination and I didn't get into that with her to my recollection.

MR. CUMMINGS: I remembered distinctly the solicitor asked her if she carried a watch and I got back up on recross and asked her if there's clocks in the house.

THE COURT: I recall that as well. Yes, sir, Mr. Bailey, if you'll just be mindful what you asked yesterday. You certainly may proceed.

MR. BAILEY: Okay. All right.

BY MR. BAILEY:

Q. Roughly what time was it when you got back to the villas?

A. It had to be after three o'clock.

Q. Okay. And where did you go in the villas?

A. I went to Apartment [redacted].

Q. Okay. Whose apartment is that?

A. Valorna Smith.

Q. Who else was in the apartment with you?

A. Me, Valorna Smith, Travis Felder.

Q. What, if anything, occurred after y'all got back

anybody. I opened the door and Marion Bowman, he stuck his head in, he said, "Trav, man, can you run me home?"

Q. "Trav, man, can you run me home?"

A. Yes, sir. That's what he said.

Q. Do you recall what Marion Bowman was wearing?

A. No, I don't.

Q. Okay. And when he said that would you state whether or not Travis Felder left?

A. What was that?

Q. Did Travis Felder leave with him?

A. Yeah.

Q. Ms. Brown, that's all I have. Please answer any questions Mr. Cummings may have.

THE COURT: Cross-examination.

MR. CUMMINGS: I don't have any questions of this lady based on what we just went over again from yesterday.

THE COURT: Okay. Very well. Is she to be recalled or is she free to go?

MR. BAILEY: Free to go, Your Honor.

THE COURT: All right. Any objection?

MR. CUMMINGS: No, Judge, and we thank this young lady.

THE COURT: Very well. You are free to go.

Bowman, Jr. said anything on the way back from the Allen Murray Club?

A. That he had killed Kandee.

Q. Okay. What were his words the best you can recall.

A. "I killed Kandee, heh, heh, heh."

Q. Okay. And on the way back did you make any observations of Marion Bowman, Jr.?

A. Excuse me?

Q. Did you make any observations of him as he was sitting in the car? Did you see him?

A. Did I see him?

Q. Yeah.

A. Yes, sir.

Q. Did you notice anything about him?

A. Yes, sir.

Q. What did you see?

A. He had the gun sitting on his lap.

Q. Okay. And did you see anything else in regard to the gun?

A. No, sir.

Q. Okay. Now, the gloves that you wore -- let me backup a second. Did you get dropped off in Branchville?

A. Yes, sir.

told this man that he stole the car; isn't that true?
A. April the 5th.
Q. April the 5th of 2001; isn't that true, Mr. Johnson? I can't give you the answer. You've got to look at me and look at those nice folks over there.
A. I don't have to look at them.
Q. Okay. It wasn't until then, was it?
A. Yes, sir.
Q. I'm just going to ask you politely now. Kandee, Miss Martin and Mr. Bowman were friends, weren't they?
A. Yes, sir.
Q. They all went to school together?
A. Yes, sir.
Q. Friends with you?
A. Yes, sir.
Q. And you'd see Marion around Miss Martin a lot, wouldn't you?
A. Yes, sir.
Q. And you'd see Miss Martin around, seeing the other fellows at the apartments and other places, too, wouldn't you?
A. Yes, sir.
Q. So it was not uncommon for Marion to be around

Q. What do you do there?
A. I'm a laborer.
Q. Okay. Now, you have some charges pending against you in connection with this case; is that correct?
A. Yes, I do.
Q. Okay. And are you charged with accessory after the fact and arson in this case?
A. Yes. Yes, sir.
Q. Okay. And do you have a lawyer representing you, Charles Williams?
A. Yes, sir.
Q. He's from Orangeburg. And through your lawyer have you entered into a plea negotiation with the State?
A. Yes, sir.
Q. Okay. And as a result of that plea negotiation are you going to be entering a guilty plea to accessory after the fact to arson third degree?
A. Yes, sir.
Q. And the other charges would be dropped; is that correct?
A. Yes, sir.
Q. And in exchange for that agreement are you to testify truthfully in this or any other trial that

you're called upon to testify in?
A. Yes, sir.
Q. All right. And, Travis, are you prepared now to testify truthfully?
A. Yes, sir.
Q. Do you know Marion Bowman, Jr.?
A. Yes, sir.
Q. Okay. Would you point him out, please?
A. (Indicating.)
Q. Describe him.
A. He has on a white shirt over there, sitting between the white fellow, black lady.
Q. Okay. How long have you known Marion Bowman, Jr.?
A. Since school, elementary school.
Q. Okay. How about James Taiwan Gadson, do you know him?
A. Yes, I do.
Q. How long have you known him?
A. Since elementary school.
Q. Okay. How about Hiram Johnson?
A. Since elementary school.
Q. Okay. Darian Williams?
A. Since elementary school.
Q. Okay. Did you know Kandee Martin?

involved with it, don't worry about it, everything is taken care of."

Q. Where did you go?

A. I took him to his house.

Q. Okay. How long do you think it took you from the time Marion Bowman, Jr. came to the apartment until the time you dropped him off?

A. Maybe 30, 40 minutes, somewhere in there.

Q. Okay. I want to call your attention now to several weeks before this happened and ask whether or not you recall going to Orangeburg with Marion Bowman?

A. Yes, sir. I did.

Q. Did somebody else go with you?

A. James Gadson.

Q. Okay. And where did you all go?

A. We went to my girlfriend's house first and he told me he needed to go.

Q. Who?

A. Mr. Bowman told me he needed to go to Coleman Street.

Q. To Coleman Street?

A. Yes, in Orangeburg. We went out to Coleman Street and he purchased a .380.

Q. You were with him when he made the purchase?

these folks a few moments ago, everything was nice and calm, spent a few seconds with them, went back in the club?

A. I was out there, yes.

Q. Okay. And then you go back inside and you don't know what else happens until about three o'clock in the morning. And you're sure of that?

A. When I left, when I left out the club, was getting in the car to go home and that was it. I didn't see him anymore.

Q. Okay. And at three o'clock in the morning Mr. Bowman comes to the door?

A. After 3:00, yes.

Q. You're sure of that? After 3:00, excuse me.

A. Yes.

Q. About what time would you say, ma'am? I don't want to put any words in your mouth, what time after 3:00?

A. It's after 3:30, I know that.

Q. After 3:30?

A. Yeah.

Q. Okay. And then Travis and he are gone. And I want you to tell these folks how long were they gone?

A. Travis was gone about ten, 15 minutes and he came back. And when he came back he came back by

A. Yes, sir.
Q. Did you see the watch?
A. No, sir.
Q. I want to call your attention to somewhere in the time frame of February 18th to the 20th and ask whether or not you found something in your house?
A. Yes, sir. A gun.
Q. Okay. What did you find?
A. A gun.
Q. Okay. And do you remember what the gun looked like?
A. No. All I know it was black. I don't know too much about no guns.
Q. All right. Where did you find it?
A. In the chair.
Q. Okay. I'm going to show you State's 25 and ask you to look at that. Is that the chair you found the gun in?
A. Yes, sir.
Q. Okay. Now, before you found the gun deputies had looked for the gun, they looked through that chair?
A. Yes, sir.
Q. And looked through some other furniture?
A. Yes, sir.

A. It was told to me.
Q. It was told to you by who?
A. Hiram Johnson.
Q. Hiram Johnson. Your spouse is in police custody, right?
A. Yes.
Q. So you told the police that Hiram told you where the gun was?
A. Yes.
Q. You did?
A. Yes.
Q. Which police officer did you tell that to?
A. I don't remember. I'm not familiar with Dorchester.
Q. Well, let me let you look around the courtroom a little bit. There's a handsome guy sitting at the table here, Mr. Coker, did you tell him?
A. I might have, I don't know.
Q. Well, it's kind of important, ma'am. I'm going to ask you to try to remember now, please. It's kind of really important now to find out who you told that somebody else told you where this weapon might be.
A. I can't remember.
Q. Ms. Bowman, would you not want to remember that somebody tells you there's a gun in your home with

Q. Okay. And did you become aware that somewhere around late February that Marion Bowman, Jr. had been arrested?
A. Yes, sir.
Q. Okay. And shortly after that, don't say anything that anybody said, but did you have a conversation with your sister, Dorothy Bowman?
A. Yes, sir.
Q. Okay. And, again, without saying anything, did you help her move?
A. Yes, I did.
Q. Okay. And how did you -- what assistance did you offer her to move?
A. I rent a U-Haul.
Q. Okay. Did y'all move furniture out of that trailer that's shown in that picture?
A. Yes, we did.
Q. Okay. Tell the jury, please, what happened to those two piece of furniture that you previously loaned to your sister that you just described.
A. Well, basically she had got it after whatever incident happened, she asked me to move her, which I did. And I nicely took that, I lended them back to my house, which that was Locket Street.
Q. Okay. So you took that furniture back; is that

right?
A. Yes, sir.
Q. Okay. And I want to call your attention to June 6th, 2001, ask whether or not you were home that day?
A. Yes, I were.
Q. Okay. And did somebody come to your house?
A. Yes, they did.
Q. Okay. Was it some police officers?
A. Matter of fact, yes, there were two detectives.
Q. Okay. And do you recognize any of them here in court? How about this young man with the glasses over here? If you're not sure --
A. I'm not sure, but I do recall one guy, he was short with gray hair and that's all, that's the only one I recall.
Q. Okay. When they came to your house, did you let them in?
A. Yes, I did, with no problems.
Q. What did they do while they were in your house?
A. When they came in they stated who they were and they also read me a statement from my sister which they had took at the jail. And they were standing in front of the sofa which they claim they found whatever they found, and they was talking to me and

telling me that my sister give them a statement, who I were, where I stayed at and what they could find in that chair that was in my house.

Q. Okay. Did they search the chairs?

A. Yes, they did.

Q. These were the chairs that you had gotten back from your sister; is that correct?

A. Yes, sir.

Q. Were you inside the house when they were searching?

A. Yes. I was standing right behind them, right behind the sofa.

Q. Tell the jury what you saw as they were searching through your furniture.

A. At first when they were searching, they pull the chair up. I kind of like assist them to move the pillows or cushions or whatever I had on there. They kept searching for five or ten minutes. After a while the guy, he's short with the gray hair, he decided to get on his knees. And whatever he did he went underneath of my sofa, wherever it was at, and he pulled out a case of bullets.

Q. Okay.

A. He opened it up in front of me, he count how many bullets supposed to be there, how many were

feel? We're having stretch time.

(David J. Collins, called as a witness, having first been duly sworn, is examined and testifies as follows:)

DIRECT EXAMINATION

BY MR. BAILEY:

Q. Mr. Collins, what is your educational background, sir?

A. I received a bachelor's degree from the Citadel in 1984.

Q. All right. Where are you employed now?

A. I'm employed with the South Carolina State Law Enforcement Division, commonly known as SLED.

Q. How long have you worked for SLED?

A. I've been at SLED for just over 12 years.

Q. What do you do at the present time at SLED?

A. Currently I'm employed in the forensic services laboratory as a firearms and tool marks examiner.

Q. How long have you worked in firearms and tool mark examination?

A. Since I became employed at SLED over 12 years ago.

Q. The entire 12 years?

A. Yes, sir.

Q. What training have you had in firearms

identification, or firearm and tool mark identification?

A. After I became employed at SLED I entered an on-the-job training program in firearms and tool marks analysis. This is essentially an apprenticeship and is the only way firearms examiners can be trained, there are no college courses that can teach you this. This course lasts for approximately two to three years. After I successfully completed that course I was certified by SLED as a firearms and tool marks examiner.

Following that certification I began case work on my own and joined our professional association, which is the Association of Firearms and Tool Marks Examiners or AFTE. Through that association I received a continuing education and training in my field in the form of seminars which I attend as often as possible, and in the form of other training opportunities that come through that organization such as armor schools or firearms repair schools. And I have successfully completed those provided by Glock, SIG, Colt, and Beretta firearms manufacturers.

Q. All right. Mr. Collins, have you testified in the past as an expert in the field of firearms?

A. Yes. I testified in the circuit courts of South Carolina in excess of 200 times in the area of firearms examination. I've also testified in the state courts of Georgia and North Carolina and in the federal court system.

MR. BAILEY: Your Honor, I would tender Mr. Collins an expert in the field of firearms.

MR. CUMMINGS: I have no questions or voir dire of this gentleman and I have no questions of this gentleman being an expert in the field of forensic firearms examination. Thank you, sir.

THE COURT: So qualified.

MR. BAILEY: Thank you, Your Honor.

Q. Mr. Collins, calling your attention to May the 30th, 2001, I would ask whether or not in the course of your duties at SLED did you receive a .380 caliber High Point pistol from Allyson Penn of the Dorchester County Sheriff's Office?

A. If I could refer to my notes for a moment.

Q. Yes, sir.

A. Yes, I did. I received a High Point model CF .380 auto caliber pistol from Allyson Penn on that day.

Q. I hand you States 42 for identification and ask

whether or not that is the pistol that you received from Ms. Penn?

A. Yes. This is the pistol that I received from Ms. Penn, it bears my markings I placed on it so that I can identify it later in court. It also bears the same make, model, and serial number as I recorded.

Q. All right, sir. I'm going to hand you an envelope which has been marked State's 44 that contains seven containers and ask if you would take a look at that. And each one of those containers has a separate exhibit number and also a SLED lab number.

A. The first thing I note when looking at this container is that on the outside of this plastic package is the -- our lab number for this case and item numbers and my initials where I marked this particular package in the laboratory. This container also bears my markings, my initials, the item number and the lab number.

There's a piece of tape on this particular item of evidence that I did not place there. In order for me to examine the item for my markings I would have to remove that tape and I would ask if that's appropriate.

MR. CUMMINGS: I have no objection to let the gentleman do that, ma'am.

THE COURT: Okay.

MR. CUMMINGS: Thank you, Mr. Bailey.

A. Yes. I've examined each of these items. These containers contain in total six fired .380 auto caliber cartridge casings and one fired bullet.

Q. All right. Ordinarily, sir, is there a way that you normally would determine whether or not a particular fired shell casing was fired by a particular weapon?

A. Yes, there is.

Q. And how would you ordinarily do that?

A. Ordinarily when we receive any evidence in the laboratory the first thing that we would do is take notes as to its condition. Following that we would test fire a suspect firearm in order to obtain test standards that we can use to compare with fired evidence that is submitted.

For instance, if we have fired cartridge casings and bullets we want to determine if they were fired by a suspect firearm, we will test fire that firearm to obtain test bullets and cartridge casings that we know were fired by that gun. What we do then is compare them microscopically, the tests verses the evidence under a comparison microscope.

What we are looking for are microscopic marks left on those items by the firearm during the firing process. When the firearm was manufactured various machining processes are used that leave behind microscopic defects on areas such as the inside of the barrel, the breech face of the firearm which is the fore-faced portion of the slide at the back of the barrel, the firing pin, the extractor, the ejector. Any of the metal portions of the firearm that come into contact with the cartridge or a bullet during the firing process can leave behind markings on that particular item. Those markings are unique to each individual firearm.

The defects that are left by the machining process are as unique to that firearm as a fingerprint is to a person, and likewise the markings that that firearm will leave on a fired bullet or cartridge case are also unique to that particular firearm. If we look at these items under a comparison microscope and find areas where these markings left by the firing process match, we can determine that that particular item had been fired by that particular gun.

Q. All right, sir. And when you test fired this particular gun, this particular .380 semiautomatic

pistol, what occurred?
A. When I first received this firearm it was in water. In order for me to even be able to test fire this firearm I had to clean it, which involved a certain amount of field stripping or partial disassembly of the firearm, and then it had to be placed back in working condition and test fired.

Before actually firing the gun in the bullet recovery tank to determine if it functioned properly we typically do something known as dry firing. You'll cock it one time, you will pull the trigger, make sure you've reassembled it properly and that it will function.

When I did this in the laboratory before actually test firing the gun the firing pin on this particular firearm broke. This is not uncommon for some types of firearms to break a firing pin during a dry firing process as it typically subjects the firing pin to more stress than what it is typically encountering during the normal firing process.
Q. All right, sir. So you were not able to use the firing pin to make any identification, is that correct, because it broke?
A. That is correct. In order for me to test fire

the firearm from that point I had to take a firing pin from a laboratory reference collection to place in this firearm to test fire it. As a result of that I was able to successfully test fire the gun and obtain test standards, but also as a result of the fact that I was using a firing pin from another gun I was unable to use any firing pin marks for any identification purposes.

Q. What marks did you use that were caused by the weapon imprinting on the shell casings?

A. The area of the firearm that I used for my identification purposes were markings left by the breech face of the firearm.

Q. Okay. And, again, just to make sure we're clear, what is the breech face and how does that impact the shell casing?

A. The breech face is the area, again, at the back of the barrel. If you were to look at the base of a cartridge case there is a primer in the base of the cartridge case, that is flat up against what is known as the breech face of the firearm. There is a hole in the breech face through which the firing pin will pass to strike the primer and the breech face is that area around that hole against which the cartridge case is supported.

When the cartridge is fired pressure is generated in the chamber of the firearm that forces the cartridge case and the primer back against that breech face. And any defects in that breech face will possibly be transferred to the primer of the cartridge case and those defects are what we're looking at to make our identification with that particular firearm.

Q. All right, sir. And did you test fire the gun to get breech face comparisons on sample bullets that you knew were fired by that particular gun?

A. Yes, I did.

Q. And did you compare those fired bullets that you knew were fired by that particular .380 High Point gun with the six shell casings that were sent to you for examination?

A. Yes. I compared the fired cartridge casings that I fired in this firearm, known as tests, with the six submitted fired cartridge cases that were submitted to me, and I compared fired bullets with the fired bullet that was submitted.

Q. All right, sir. And with respect to the shell casings, what determinations or findings did you make in test firings?

A. Of the six fired cartridge cases that were

submitted I was able to determine that five of them had been fired by this firearm to the exclusion of all other firearms. My --

Q. Would that be even another .380 High Point gun manufactured at the same plant, the same time?

A. No, sir. It would be this particular firearm and this particular firearm only.

Q. All right, sir. That's five out of the six were definitely fired by that pistol?

A. That is correct.

Q. All right, sir. What about the sixth one?

A. The sixth one my comparisons were inconclusive versus this particular firearm. And while I have no reason to exclude this firearm, all that means is that the markings that were left on the fired cartridge case were not as clearly or as nicely defined as a result of some other variable. It could have been the fact the firearm had been emersed in water for some period of time, it could be any number of things. The cartridge cases when they are fired in a firearm do not always mark exactly the same to the same extent or with the same amount of clarity.

Q. All right, sir. And as far as the condition of these particular shell casings, if you need to examine them to answer my question, were they bent

or -- in any way?
A. I do recall that some of them, the mouth portion of the cartridge case had been bent or dented slightly. The term that we sometimes use is slightly crushed.
Q. All right, sir. And did that interfere with your ability to determine the breech face markings on them in any way?
A. Not at all, because that portion, the case mouth portion of the cartridge case is on the opposite end of the cartridge to that which I am examining microscopically.
Q. All right, sir. Now, with respect to a fired bullet, how do you determine whether or not that bullet may have been fired by a particular gun?
A. When we're looking at fired bullets, specifically in the case of a pistol such as this, we're looking at areas, again, marked by the firearm as a result of the firing process. Firearms such as this are manufactured with spiralling grooves called rifling in the barrel. The rifling serves to cause the bullet to spin when it leaves the barrel and that spinning tends to stabilize the bullet in flight.
What we are looking at in our examinations are areas where these grooves mark the

surface of the bullet. Or actually we're looking for microscopic defects in those grooves that have been transferred to the surface of the bullet. It's in the same principle as the cartridge case. We're going to be looking at a test-fired bullet versus an evidence bullet side by side under a comparison microscope and turning both and looking for areas where those markings match.

Q. All right, sir. And with respect to SLED item number 3, the fired bullet, did you compare that with bullets that you had personally fired from that pistol?

A. I did.

Q. And what were the results of that comparison?

A. Again, my results of that comparison were inconclusive. While this fired bullet displayed rifling characteristics that were similar to those found on test bullets that I fired in this gun, I did not find enough clearly defined individual characteristics to be able to compare it positively with that gun. I can't say that it was not fired by that gun. As a matter of fact, I can say that it was fired by either this gun or another gun with similar rifling.

Q. All right, sir. With respect to the caliber and

the brand and the style of that -- of the shell casings, can you characterize those?
A. All of these submitted fired cartridge cases were Winchester brand .380 auto caliber cartridge cases.
Q. All right. With respect to the bullet, as far as the components of the bullet based on your expertise could you tell anything about the caliber, the brand, the style of the bullet?
A. My examination of the bullet, aside from my comparisons of it with the tests from the submitted firearm, reveal that it is consistent also with being a .380 auto caliber bullet, and it's also consistent with bullets manufactured by Winchester.
Q. All right, sir.

MR. BAILEY: Bear with me one second, please.

THE COURT: All right.

Q. I'm going to show you State's 36. And I believe you've probably not seen this before; is that correct?
A. No, I have not examined this.
Q. All right, sir. If you would go ahead and open that up, I'm going to ask you to take a look at that.
A. (The witness complies.) This box is a

Winchester brand ammunition box, it's labeled as what's containing .380 auto caliber ammunition. It is labeled specifically as containing .380 auto ammunition that has been loaded with a 95-grain full metal jacket bullet. And that is what these particular unfired cartridges that are packaged with this are consistent with based on their head stamp and bullet design.

Q. All right, sir. And how do those particular unfired bullets in that that you just referred to compare with the spent shell casings that you previously described?

A. They are consistent with the fired cartridge cases that I examined previously, they are the same caliber, they are the same brand. And as far as whether or not these particular cartridges were loaded with the same type of bullet I cannot determine that because there are no bullets present in them now, but they are definitely the same caliber and the same brand.

Q. All right, sir. Please answer any questions Mr. Cummings might have for you.

CROSS-EXAMINATION

BY MR. CUMMINGS:

Q. Mr. Collins, good afternoon, sir. I'll let you

reading like on that first one, what does that mean?
A. On this is that actually you're only detecting one individual in this. When you inherit these, these are referred to biolelics (phonetic), you'll only have two numbers per person. So if you're having more than two that's when you know you're starting to detect an additional profile. But in certain sites we were only detecting only one individual.
Q. Okay. And in those situations where you only detect one individual on the vaginal swab, how does that compare with Kandee Martin's DNA profile?
A. It matches Kandee's profile at all those sites.
Q. Okay. And on the ones where you were able to separate it out and get a male and female fraction, how does the second number compare to the DNA profile of Marion Bowman?
A. At each site that we were detecting an additional profile, it matched Marion Bowman's profile.
Q. Okay, sir. Can you point that out with each one of them where you were able to pick up a male and female fragment?
A. Okay. The additional profile, this was the 14, 18, Marion's a 14, 18 at this site. The major

vaginal swab as the DNA in the blood?
A. Yes, I did.
Q. All right, sir. And what were the results of that calculation?
A. The odds are, the probability is 1 in 5,300.
Q. All right, sir. Please answer any questions Mr. Cummings might have for you.

MR. BAILEY: Your Honor, I would move these into evidence at this point.

THE COURT: Any objection?

MR. CUMMINGS: Judge, at this point, no, ma'am.

THE COURT: Very well.

MR. CUMMINGS: No legal objection.

THE COURT: State's Exhibits -- what are the numbers again?

MR. CUMMINGS: Judge, looks like, if I may, 73-A and 73-B; is that correct, Mr. Bailey?

MR. BAILEY: That's correct.

THE COURT: 73-A and B in evidence without objection, they are charts.

MR. CUMMINGS: Thank you, Judge.

(Entered into evidence were State's Exhibits 73-A and B, DNA charts.)

a coverup of what happened here. There were people that knew what happened and either lied or didn't come forward at all, there were people that hid evidence and disposed of evidence. And these people were charged criminally by the State of South Carolina.

There were a lot of people charged. And they entered into plea agreements with the State of South Carolina in order to get their truthful cooperation here. And the Judge -- Mr. Cummings or Ms. Hardee-Thomas will get up here and I will anticipate they'll tell you these people had a reason to lie, they had a deal cut. And I will not disagree with that. These people have a plea agreement, their agreement is to testify truthfully, but you should take into consideration that they're facing jail time and some of these people are getting probationary sentences. Some are not, but some are and you should take that into consideration.

But I would ask you when you consider these witnesses' testimony to compare what they're saying with other witnesses that have no reason whatsoever to misrepresent the truth to you and to compare their testimony with the

watches, they're guessing at the time, it's a year later. It's a minor detail.

Hiram Johnson testified. Hiram Johnson, again, young man up here said he had a head injury, testified he didn't drink and he went to that beer joint that night with those guys. Four of them went in Kandee Martin's car. You hadn't heard any testimony about Hiram Johnson having any kind of charge against him or any kind of a deal with the State, any reason to say something wasn't true.

And he told y'all that on the way back from that club before them riding in Kandee Martin's car going back to Branchville, before he got out what did Marion Bowman say in that car? "I killed Kandee." And then, ladies and gentlemen, he laughed when he said that. His words were "I killed Kandee, heh, heh, heh." Y'all recall that testimony. And Hiram Johnson's a friend of his with no reason to lie about it.

.380 High Point semiautomatic pistol. You heard Hiram Johnson and Felder say both of them testified they're with him several weeks before this murder, they're with Marion Bowman,

Ladies and gentlemen, big deal about the watch in the pocket. There's been no charge of Mr. Bowman about the watch in the pocket. I'll tell you that it's a big deal, how it came about was let's look at the DNA. It showed sometime that Miss Martin, who was friends with Mr. Bowman, Miss Martin who was friends with Mr. Gadson, Miss Martin who was friends with a lot of these folks in this community in Branchville, sometime Mr. Bowman and her had relations. Sometime. Do you think that was put there to try to poison you to get you angry? Do you think that was presented to want to get you to lash out? Do you think there was a reason? How can you tie that into this case? How?

There's a reason. If you look in your heart, you look in your common sense you'll find a reason. And I'll say this also to you. Why, why would Marion want to kill her? He's told you by pleading not guilty he didn't do it. You've got to prove the physical evidence that Marion did it.

Ladies and gentlemen, if this is the only issue that preys to you, did Mr. Gadson fit why he had to say she was shot in the front?

doubt that Marion Bowman is guilty of murder? That is your province. Submitting that issue to you reasonable doubt exists.

You have no one to reward, no one to punish. Everybody feels bad about what happened here. Nobody will ever question you about your decisions that you make in that box or in that backroom. Nobody has been allowed to go near you good folks and nobody will afterwards unless you want to talk to somebody about it. And those questionnaires asked you about that, whether you would have an impact, whether you would have some pressure on you to vote your conscience, to vote what you found in this room and only in this room.

Oh, ladies and gentlemen, someone has to pay for the loss of that little girl, but are you so sure that the right one's going to pay? And that's the question that only you can determine. It's obvious, it is so obvious to be angry, it is so obvious that you know that the price of justice is screaming out here to find somebody for this. What if the one who did cut his deal and got a deal and will go on?

It's easy to jump. I wanted to jump

verdict is in due form. If you will publish the verdict, Ms. Graham.

THE CLERK: Indictment number 2001-GS-18-348 and indictment number GS-18-349, the State of South Carolina vs. Marion Bowman, Jr. Verdict as to murder, guilty. And to the charge of arson third, verdict guilty. Signed by Lianne Luisi. If this is your verdict, will you all please raise your right hand?

THE COURT: Allow me to observe that all right hands are raised. If you'll please poll the jury.

THE CLERK: As I call your name -- you can put your hands down. As I call your name, please stand.

BY THE CLERK:

Q. George Young, Jr. Is this your verdict?

A. Yes, ma'am.

Q. Is it still your verdict?

A. Yes, ma'am.

Q. Leo Sullivan, Jr. Is this your verdict?

A. Yes, ma'am.

Q. Is it still your verdict?

A. Yes, ma'am.

Q. Gene Davis. Is this your verdict?

You have found Mr. Bowman guilty of murder and arson and no one will ever invade your province and your decisions. Whatever the good 12 of you did back in that room with our four alternates sitting in a separate room, that is your total issue. No one has ever challenged that. When you came back with that verdict at 6:29 the other night, you folks left, and we continued the work.

We're back before you this morning again to tell you that Mr. Bowman has been found guilty of those two crimes. The least amount of time this man will ever do is to die in prison. And that is not something stated before you lightly. He will never, ever walk out of a prison in this case unless it is feet first being carried by other people. That is the least punishment that could happen to this human being now, Mr. Bowman.

He was 20 years old when this incident took place, he is now 21. Miss Martin was a young lady also. If I've done anything, folks, to do anything other than be polite or respectful to the memories of Miss Martin I apologize to each and every one of you. I've

Q What year was that?
A He was born on [redacted].
Q 1999. And what was -- what is Tyler's full name?
A His name is Tyler M. [redacted].
Q This was Kandee's son?
A It was her son.
Q All right. Did Kandee live with you when Tyler was born?
A Yes, sir.
Q And continued to live with you after that; is that correct?
A Yes, sir.
Q Okay. Ms. Martin, could you describe for the jury Kandee's relationship with her son, Tyler?
A A wonderful relationship. He loved his mother with all his heart. They had a relationship that you just can't explain because it was so wonderful. He loved her and she loved him. They played together, they loved each other. They just had a bond that no one could ever take from them.
Q And could you describe your relationship, Ms. Martin, with your daughter?
A A wonderful relationship. She was my best friend, my daughter and my best friend.

A No.
Q No other child, just that one child?
A Just that one child.
Q And the reason I ask that, sir, is obviously -- and, again, I'm just asking this as a gentleman now, I want to make sure that I heard that correct and I apologize to you, sir, for asking that.

Kandee, as Mr. Bailey asked, she had friends in all different walks of life?
A All different walks of life?
Q Yes, sir. I mean like --
A She had school friends and -- you know, and friends that we go places, camping or whatever. You know, they make friends, you know, everybody does that.
Q Yes, sir. What I mean by friends of all walks of life, different kinds of people?
A Yeah.
Q And what is the name of the father of your grandchild, sir?
A I don't know. I don't want to release that information.
Q You don't know it, sir?
A I don't know. I'm his daddy.
Q Yes, sir.

A We had made plans together to get him an Elmo cake. We had already put it in, the order, to get him the Elmo cake, have a party for him. We were in the process of getting invitations together to send out for his party, but we didn't never get to do it.

Q Okay. Ms. Martin, can you tell the jury, please, does Tyler live with -- are you and your husband raising Tyler?

A Yes, sir.

Q What effect has the loss of his mother had on this baby?

A Traumatic. He asks about her.

MR. CUMMINGS: Objection, Your Honor, respectfully. That goes right to what we were at side bar about, please.

MR. BAILEY: I would just ask Mr. Cummings to let me try my case.

MR. CUMMINGS: Judge, I'm just trying to get everybody a fair trial.

THE COURT: Gentlemen, on the basis we discussed I'll allow the testimony. Overruled.

MR. BAILEY: Thank you, Your Honor.

A Could you please ask that question again?

Q Yes, ma'am. What effect have you observed with Tyler as to the loss of his mother?

Q Who's younger?
A Who's younger, Yolanda Bowman.
Q Are there any other siblings?
A Unh-unh.
Q Can you finish telling us what you were getting ready to say?
A And me, Marion, we would always argue about who wear who clothes. And it always turned up I say, no, you're not wearing my clothes so I always end up giving him the clothes to wear. Then we would always like do things together, things like that. When my mom took sick in her back it was only left with me and Marion to do the cleaning and the cooking. And I was never the type to cook. I would always clean, he would do the cooking.
Q Okay. So he took care of the cooking and you did what now?
A I would always clean.
Q Did there come a time where you had siblings, other siblings, or children or relatives in the house with children?
A Yes, we had our godson. Well, my mother's godson, Donique, she used to keep him during the summer and stuff and he used to go out and play with him, get up on the truck and they would ride.

Marion Bowman, Jr.

Q We're looking at Defense Exhibit Number14.

A Again, this is my niece, Marissa B.

Q All right. Lastly we're looking at Defense Exhibit 13.

A And this is my niece, Marissa B.

Q All right.

MS. HARDEE-THOMAS: Your Honor, they've been marked for identification into evidence. May I be allowed to pass these to the jury?

THE COURT: You may.

Q Ms. Bowman, do you love your brother?

A Yes, ma'am. I do.

MS. HARDEE-THOMAS: Beg your indulgence, Your Honor.

THE COURT: All right.

(Ms. Hardee-Thomas and Mr. Cummings conferring with Mr. Bowman.)

Q Now, you touched on a point with regards to you and the other siblings in the home when your mom had health problems. When was that, what age were you then?

A I don't know, I was about -- probably about -- I was in my teens. Really, to be honest, I don't remember.

Q What grade in school were you?
A About in seventh grade.
Q Okay. What grade was Marion then?
A Marion was in the sixth grade, I think.
Q And you basically helped your mom at home?
A Yes, ma'am.
Q Did you go to school during that time?
A Yes, ma'am.
Q Okay. When did your parents separate?
A My mom and my father separate when I was small, when I was probably about to go on one.
Q Was there any problems in the home?
A Yes.
Q What type of problems, ma'am?
A My father was very abusive to my mother.
Q Okay. There was domestic violence in your home?
A Yes.
Q Are you asking for mercy for your brother?
A Yes, sir. Yes, ma'am. Yes, ma'am.

MS. HARDEE-THOMAS: No further questions, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. BAILEY:

Q One thing, when was Dorothy Mae Bowman's baby

Q Okay. Was your father at home?
A No. My father was never there.
Q Okay.
A Which is Marion Bowman, Sr.
Q Okay. Was there another man in the home?
A Yes. My stepfather, Joseph Sims.
Q Okay. What part did he play in the home?
A He played the daddy part.
Q Okay. Meaning what did he do with the children?
A He would take us out, you know, show us what a father supposed to do, you know, help discipline us when we didn't have our own father to do it. I mean, take us out on the road with him, you know, show us, you know, what a father supposed to do.
Q What did he do for a living?
A He drove truck, truck driver.
Q So it enabled you guys to get out of the state?
A Uh-huh (affirmative response).

THE COURT: Could you answer audibly for us instead of unh-unh or uh-huh?

THE WITNESS: Oh, yes, ma'am.

THE COURT: Thank you.

Q I wanted to show you some pictures.

MS. HARDEE-THOMAS: Your Honor, may I approach?

Q Not a picture of any issue of him in school other than those four pictures?
A No, sir. And I would like --
Q Answer my question. Any pictures?
A No, that's it.
Q There came a time where you met a man in your life named Mr. Joe Sims?
A Yes, sir.
Q Could you please tell the ladies and gentlemen of the jury about your life with Mr. Sims and when that occurred?
A He did what a father should do. He helped took care of my kids, he took them on adventures, he took out time with them and taught them different things which a father should do with a guy which was my son Marion, and he made our life different.
Q You met that man in what year?
A Early '90s.
Q All right. And he left your life when?
A Like '98. Like '98, '99, something like that.
Q In 1997 did Marion get in trouble with the law?
A Yes, sir.
Q How old was your son in 1997, ma'am?
A Like 18, 17, 18.
Q You're not sure? When was Marion born?

mental health, which he did one time. He said he didn't like it and didn't believe in what mental health had to offer so he didn't go again.

That same year with the death of Patrick, Joseph Sims, who had been a very stabilizing force in the family, had done -- had really taken an active role as a father for Marion and his sisters, left the home, he moved out. And so this was the second father figure that abandoned Marion.

They moved again after Mr. Sims left which made the eighth move in 17 years for the Bowman family. In addition, that year Marion was hit in the head with a small baseball bat and was knocked unconscious for ten to 15 minutes. He reported that he was breaking up a fight between a man and a woman and was struck by one of the man's friends.

In '98 as a result of the burglary of a gun that killed Patrick, Marion was convicted of third degree burglary and sentenced under the Youthful Offender's Act, he served 104 days in shock incarceration, given two years' probation. After he was released he held a succession of construction and rebar jobs. He remained essentially employed most of that time until his most recent arrest.

While he was doing this and actually

A Well, I guess because she helped me out when I need help, she would help me out as far as taking care of them.
Q Was there any reasons that Marion had to take care of that lady?
A Love.
Q Were there any reasons other than love for him taking care of you?
A All I can say is love and I'm his mom, you know, he know I need the help.
Q Can you describe to the ladies and gentlemen of the jury your physical condition from about the time that Marion was in grammar school until he got to high school?
A Well, I start having problems with my back back in '90 and I was like couldn't do nothing for myself. I kept going to the doctor and they was trying to find out what it was. And he was my backbone because if he didn't get me out of the bed and let Kendra and Yolanda dress me before he get to school I had to stay in the bed until he come back.
Q So that was Marion's chores?
A Yes. When I were able to work he was the one would cook and Kendra and Yolanda would clean up.
Q Can you describe Marion's issues with his father

always sticking up for Marion, never listening to the teacher's side of the story, never taking the side of the school, never making Marion be responsible for his actions. A few months after this incident there's documented in the medical records that he had been grabbed on the left arm causing abrasions by a teacher, but I didn't see anything in any of the school records on that.

He certainly by fourth grade was described as very impulsive. This could have been attention -- ADHD attention deficit.

MR. BAILEY: Your Honor, I'm going to object to "could have been" if he's unable --

THE COURT: Sustained.

MR. BAILEY: Thank you.

A Whether it was or not the school didn't explore it.

Q Okay.

A That same year when he was -- when he was nine, his sister was ten, Kendra was ten and Yolanda was seven is when his mother became bedridden with her back injury. So at the age of ten, nine, seven the kids were providing for their mother. And as Kendra said, she was doing the cleaning, Marion was doing the cooking. Other family members did not -- helped

some, but it really fell on those three kids and especially the two oldest, Marion and Kendra, to provide for their mother. They had to change her when she used the bathroom, they had to feed her, they had to clean the house, they had to do everything. They sometimes missed school because of this, sometimes they were late for school because of this.

The next year, 1990, Marion's dad remarried after having very little if any contact with his kids over that period of time. In that same year Marion's mother's boyfriend, Joseph Sims, moved into the home. By all reports from people in the school system things changed when Joseph Sims was in the home. He would go to the school, he would listen to what the school would say, he would hold the kids accountable, he would be cooperative with the school, but he was a long distance truck driver so he was not home all the time, he was on the road a lot.

Fourth grade was a grade that Marion had to repeat. The next year he was suspended and sent to an intervention program for students with chronic behavior problems. Also that same year he began experimenting with drugs -- excuse me, not with drugs, with alcohol. He would steal sips from his

members have said that. Mr. Bowman -- he would run into Mr. Bowman in the town of Branchville, Mr. Bowman would show him that he had money, but not give them any money, tell them to go see their mother about it. He would say I'll come over and pick you up to take you, I don't know, to the movies, and he would not show up. Or he would show up and not do what he was supposed to do. And Marion felt that his father would continually lie to him.

Q What else did you do as a result of learning those things, sir?

A By the time Marion started school he was five, when he started at Locket Elementary which is now Branchville Elementary. His family had moved to Turnkey Apartments and she was on welfare, the family was on welfare and they still were having financial difficulties. The child support payments didn't come on a regular basis from his dad. Relatives have told me that the kids were deprived, they were dirty, they were wearing tattered clothes and they never had stuff like other kids had they said.

After two years Mr. Bowman filed for a divorce on the grounds of a one-year separation. Ms. Bowman didn't contest the divorce. Ms. Bowman did have difficulty being 21, or actually 20 at the

time I think, with three kids under five. She was described by family members as real strict. They told me that she boxed the children, boxed being in parenthesis, and beat the children daily. Beat, again, the word they used. She would cut their behind using switches or a belt. The relatives also told me that Mrs. Bowman was known to drink, also suspected of using drugs and she testified she was arrested once for possession of drugs.

In 1986 Marion's hand was -- when he was six his hand was burned on a kerosene heater. According to the hospital records they were burned bad enough to leave blisters on his hand. This was the second injury he had as a child. The first one was at 18 months when he broke his arm when he reportedly fell off the porch. And he was also involved in an automobile accident in '86 when he flew from the back seat and hit his head on the front seat. He had a contusion of his forehead when he flew forward.

I spoke to Dr. O'Quinn yesterday, late yesterday about the injuries and to whether he could determine if there were any abuse or neglect. He said he could not recall, he did not suspect any, he does not remember the incidents themselves.

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classroom assignments. Before he finished the tenth grade he dropped out of school, at that time he was failing four courses and his GPA was 1.50.

From '95 to '97 while he struggled in school he did experience a number of traumatic events that caused him great sadness, great distress. One was in '95, his cousin Orin, who he was very close with, fell and hurt his arm in school, he was taken to Orangeburg Medical Center where they gave him the wrong medication and he died.

This upset Marion greatly, so much so that he described one incident where he was driving along a road at night and he thought he saw Marion -- or, excuse me, he thought he saw Orin on the street, on the road in front of him as he was driving. And he swerved, went off the road to avoid Orin who of course was not there.

In '97 another cousin of his who he was close with, Patrick, shot himself with a gun that Marion had given him, or Marion had made available to him. And that gun was a gun that Marion had stolen in a burglary. Marion still to this day talks about how responsible he feels for Patrick's death, he described it as a death that ate him up. His guilt became so bad that his mom actually insisted he go to

mental health, which he did one time. He said he didn't like it and didn't believe in what mental health had to offer so he didn't go again.

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While he was doing this and actually

all the time he was growing up, he would help his relatives around the house, especially his grandmother, Mary Ellen Gadson, and more especially his aunt, Mary Johnson, who is an invalid and can't do for herself. And he would go to her house frequently offering to do whatever he could to help her, mow the lawn, clean the fan blades on the ceiling fan, do whatever he could to help her.

In '99 Marion lost the third father figure in the form of his maternal grandfather, Robert Gadson, Sr. Marion described Mr. Gadson as his life and he said he felt dead when his grandfather passed away. He also admitted that he started drinking even heavier than he had before and almost to the point where he was drinking every day.

The same year, though, he did marry Dorothy Mae Williams. They're still currently married, to my knowledge, and that he had -- was never violent towards his wife. She had two children which he had a very good relationship with and who reportedly love him. He also had a daughter, Marissa, who was born in 2001.

Marion was arrested again in 2000 on charges of burglary, two charges of armed robbery.

Q I want to stop you there again and ask you -- he

was found not guilty of those, correct?

A Yes, he was. That same year he was knocked unconscious once again when he fell back and hit his head on a bench when he was playing outside. They were playing in water, he slipped and fell. He suffered a deep gash in his head, had severe headaches and blurred vision, but he refused to go to the hospital, he refuses to use a hospital since the death of his cousin, Orin.

And by the end of 2000 Marion was -- alcohol use was getting progressively worse, he drank every day of the week usually to a point of intoxication, usually mostly Old English malt liquor and gin.

Q Mr. Youngman, I'm just going to ask you a brief question here now. As far as any conclusions that you reached after going through all of what you just told these good ladies and gentlemen of the jury, and I'm going to ask you to briefly describe your conclusions. If you need to use the easel here, please do so.

A I would like to draw it if that's okay.

THE COURT: It is.

Q And, again, you'll have to stand now so that each one of these young folks can see what you've got

to do and if I move it this way --

A Yeah, this will do.

Q So Mr. Bailey can see also. Again, please, explain to the ladies and gentlemen of the jury what you're doing and why.

A The idea is, as I mentioned earlier in my testimony, no event happens in a vacuum, things come about in a person's life to cause them to behave the way they did. So to conceptualize this if you think of a valley, I guess. And this side of the valley is a problem, something that comes up in a person's life that they have to address in some way. And over here is the choices they make or the decision they make that leads that -- that addresses that problem. Not necessarily solves that problem, but at least addresses it.

Okay. So to get from the one to the other you have to have a bridge, you have to have in your mind some way to cross over to the problem to how to solve that problem, what decision to make or what choice to make, the various options you have. Okay. In life everybody has these bridges, everybody has some supports that help hold that bridge up to help you make good decisions.

In Marion's case some of those

supports, or some of the good things that helped him make good decisions, was that he was helpful to his family, he was good to his stepchildren, he was actually good to Kendra's child, too, his nephew. He had no prior criminal convictions.

Q Mr. Youngman, you're going to have to step back so the jury can see right there.

A I'm sorry.

Q I'm sorry.

A I'll just put no prior criminal....

Q Could you repeat that again? Because I blocked that.

A He has no prior criminal convictions. And he was able to maintain employment. Not always the same job, but always employed in some way. These things are all supports on that bridge. But there's also things that weaken your decision-making abilities, weaken the way you think things through. In Marion's case he had a number of things that weakened his bridge, such things as the fact that his mother was age 15 at birth, at the birth of her first child.

Q I'm going to ask you to hold up one second while a train goes by.

(Train.)

THE COURT: All right. You can proceed.

Q Age 15 at the birth of her first child and she had three children while still a teen. There was certainly domestic violence in the home, there was his father abandoned him, there was the financial difficulties in the home, there was his mother's incapacitation, or invalid status, and there was his mother's -- well, excuse me, the family history of alcohol abuse and the mother's drug use, or at least conviction of drug selling. All these things were things that weakened that bridge structure that helped Marion make a decision and make choices, make a decision on any given issue.

But you also have things that happen in your life to weigh this bridge down, cause that bridge to weaken and further things that happen as you go through life as you get older. In Marion's case he had a whole host of things that were weighing his bridge down. His own alcohol abuse, the fact that he was selling drugs, his IQ which is measured according to the William S. Hall at 81, his mother's uncooperativeness with the school and in refusal to take responsibility or having Marion take responsibility for his actions, the trauma of the death of Orin, the death of Patrick, the death of his grandfather, Joe Sims leaving the house all within a

period of two years, his chaotic, deprived childhood, the fact just going through adolescence, lack of school intervention. Let's see, the fact that he received, let's see, excessive corporal punishment, last one school behavior problems.

Q As a result of those, Mr. Youngman, looking at all those things that you described as a bridge or going between the valley to here, have you been able to reach a conclusion as to a degree of reasonable, and, again, I'm going to defer to my -- yeah, please, go back on the stand for a moment -- forensic psychosocial assessment as a licensed social worker, to a reasonable degree of psychosocial assessment or social work assessment have you reached an opinion as to this?

A Yes, I have.

Q And what is that, sir?

A Anybody that would experience those many things, those many factors that effectively weighed on his bridge as it were, and pretty much crumbled that bridge would be expected to make poorly thought out impulsive decisions, decisions that where the person in this case, Mr. Bowman, would not consider the consequence of actions because all these things weighing on him he doesn't think those things

A If he been an adult he might have decided differently.
Q Wasn't he an adult? He was 21 years old.
A Twenty-one is pretty young.
Q Pretty young. Old enough to be in the army, vote? All right, sir. I'm trying to read some of this stuff. Drug use, we talked about that. You say he had no prior criminal record. You weren't correct there, were you?
A No. I said no prior convictions for violent crimes.
Q Okay. He does, in fact, have a record of burglary third?
A Yes, he does.
Q All right, sir. Which involved going in people's homes and taking guns.

All right, sir. Why don't you have a seat, I want to ask you a few more questions, but I don't think we need the chart.

A (The witness complies.)
Q Mr. Youngman, you were asked -- you said on the first page of your report dated May 21st that the lawyers have given me a copy of, the purpose of your assessment was to do five things that you listed on that first page, is that right, sir, and you had that

first been duly sworn, is examined and testifies as follows:)

DIRECT EXAMINATION

BY MS. HARDEE-THOMAS:

Q Mr. Martin, where were you on the 16th of February of 2001?

A I just had came home from work about twelve o'clock.

Q Okay. And you were where?

A At my house.

Q Okay. And can you tell us who else was there?

A Kandee came by and asked me to borrow $3.

Q Excuse me, do not talk about what someone said to you and I'll try not to ask a question in that regard. Who was at your home?

A Kandee.

Q Okay. Who else later arrived at your home?

A Marion and Joe Fogle.

Q How did they get there?

A In Joe Fogle's car.

Q Okay. Who was there first?

A Kandee.

Q Now, how long were they all there?

A A couple of minutes is all.

Q And where were they?

A Well, they were in the bathroom, talked for a minute, then they left out.
Q Okay. And where were you?
A I was in the room hanging up clothes.
Q You were in the --
A Hang up clothes, getting myself ready.
Q In one of your rooms?
A Yeah.
Q One of the backrooms, or front rooms?
A Yeah, backroom.
Q Were you able to see were they went?
A They were in the bathroom.
Q Okay. How long did they stay in your home?
A About a minute or two, couple of minutes.
Q Okay. What happened after that?
A Marion left with Kandee and Joe Fogle followed in the car.
Q Okay.

MS. HARDEE-THOMAS: Please beg your indulgence, Your Honor.

THE COURT: Yes.

(Ms. Hardee-Thomas conferring with Mr. Cummings and Mr. Bowman.)

Q You indicated what time of day was that?
A About 12:00 or 1:00, something like that.

right there in the blue jacket, sir?
A Yes, sir. When I make my evaluation I make the assumption that the individual is guilty of everything, because he would never come to me in the first place if he was not guilty.
Q All right, sir. When you looked at that nature of the offense and the nature surrounding this offense, did that cause you any hesitation in your qualification of this gentleman?
A No, it did not, because of the fact that I have dealt with those type of people for 30 years. I have dealt with people that have committed very heinous crimes, I have dealt with people that require being excluded from the general community for the remainder of his or her life. And I put a very high level of priority on that person's community behavior in relationship to the protection of the public.
Q In this particular case, sir, now that the ladies and gentlemen of the jury have found Mr. Bowman guilty of murder, what is your understanding, sir, as our sentence, as to the sentence that Mr. Bowman will receive if the jury finds life without the possibility of parole, what would happen to Mr. Bowman in our state prison system, sir?

a classifier of prison, sir?
A It tells me two things, especially in this situation. This individual is a fairly young individual and has been able within the proper confinement and structure to do some positive things. Something else that it tells me as a penitentiary warden, is that I don't care how good he may be, he's not getting out. You have to understand that. It is appropriate, it is appropriate that we acknowledge that this individual is doing the right thing, especially during a period of time of high stress, but the point is, is that we will manage this individual and incapacitate this individual as required in whatever manner that's authorized by law.
Q Mr. Aiken, if that person in the class also assists a professor or teacher, would that also have an incident to bear upon your classification?
A It is a very good predictor that this individual will adequately adjust to a maximum security correctional environment for the remainder of his life.
Q As far as, again, sir, and I do not state this lightly, as a person gets ready to face trial in a pretrial confinement setting or whatever and as they get ready to come to court, you testified previously

about stress levels. Would that cause a person sometimes to speak out?

A Not only speak out, inmate population also can have the tendency to inflict violence upon other inmates as well as staff. And I saw nothing of that in his record.

Q If somebody were the type of person you just told these ladies and gentlemen about, would that appear after a period of three incarcerations, would that show up somewhere?

A One thing that -- the answer to that is yes, it would show up, because one thing people, layman who have never been in a correctional environment don't understand, and it is you can't fake it. You can't fake it. That behavior pattern, that behavior pattern that you are most accustomed to, whether it's violence or nonviolence, in a stressful correctional environment you can't fake it.

Q As far as Mr. Bowman, sir, would you have any hesitation in telling these ladies and gentlemen of the jury at the end of your statements today that he could adapt to future prison knowing that he would be there the rest of his life?

A I have no reservations whatsoever.

Q Would you have any concerns as a warden, or a

man, or a lady under your direction, sir, working in that prison being around Mr. Bowman?

A No.

Q Would you have any issues to tell these ladies and gentlemen of the jury about the classification of Mr. Bowman that you would make if he were delivered from this courthouse to your prison tomorrow?

A That he would be kept behind gun towers, behind fences, behind bars, behind concrete, and he would be adequately managed in a security setting for the remainder of his life because of his behavior in the community. And that the system can adequately manage him. And that I have classified thousands of inmates in this type of situation where they have inflicted violence upon people, they have violated the laws of the jurisdiction.

Q Mr. Aiken, would you have this statement, I guess, sir, as not to embarrass you or anything, are you saying this because you've been asked by the defense to come up to the stand and testify, sir?

A No. I don't take every case.

Q Have you also testified for the State or the federal government, sir, against people?

A Yes. I have testified for the prosecution in criminal matters.

A. No, sir.
Q. Okay. Ms. Thomas is going to fast forward this for a few moments, but I don't want to block anybody's view, if you'll just stand right there for a moment, sir. As she's doing that, where did you go after you made that purchase?
A. I went to Apartment [redacted] in the Villa Apartments.
Q. How far is that from this store?
A. Maybe a mile to two.
Q. And what's the name of the store you went into that night?
A. Horizon.
Q. Horizon?
A. EZ Horizon.

MR. CUMMINGS: Beg the Court's indulgence, Your Honor, while we fast forward this.

(Pause in proceedings.)

Q. Stop the frame. Is that you again, Mr. Felder?
A. No idea, I didn't see it.
Q. No idea. Well, let it run first then.
A. Yes, sir.
Q. Okay. What time is that, sir?
A. 3:14.
Q. 3:14. And what day of the week and the month, sir?

A. 2-17.
Q. You came back to the store, what did you purchase?
A. Gasoline.
Q. Gasoline. I'm going to ask you to take the stand for just a moment. And if we could just leave that frame on for just a minute.
A. (The witness complies.)
Q. When you testified here a few days ago did you tell the ladies and gentlemen of the jury that you purchased gasoline?
A. No, sir. I didn't.
Q. Did you ever tell them that you went back to the store that night after testifying in here the other day?
A. No, sir. I didn't.
Q. Mr. Bowman is not in that picture at all in the store, is he?
A. No, sir. He isn't.
Q. Because he wasn't there in the store with you?
A. No, sir. He wasn't.
Q. And then Mr. Bowman -- it's your testimony to these ladies and gentlemen of the jury, and if I'm incorrect, sir, you'll correct me, it's your testimony that you went back to the projects after

kind of lost. I feel inadequate through the testimony and the evidence that you've -- to really get across to you the horror of what happened out there.

We're all dressed up in our coats and ties, we stand up and sit down at the appropriate moment and we have this decorum. And in this atmosphere I just can't get across to y'all I don't believe how bad this is, how horrible it is. I'm trying with the evidence, but it's difficult.

And I would ask that you think of the evidence, just in your mind's eye the evidence you heard from that stand, the fear when Bowman began to shoot at her, a man she thought was her friend, the fear and pain when she was hit with that first shot in the back, the fear she felt as she ran away and he ran after her with that gun, turned toward him and begged for her life.

You've heard the testimony, the last moments of her life she didn't think about herself, she was thinking about her baby. "Black, please, don't shoot me no more, I've got a child to take care of." And after that he put that fatal shot in her head. I'm not going to

difference as a legal matter.

I'll talk to you all about the next aggravating circumstance alleged by the State which is kidnapping. I talked to you about that in the opening and I won't go through all that again, but I would ask you to remember your duty to make the law as the judge gives it to you, listen to her instructions on the definition of kidnapping, the words inveigle and decoy, kidnapping is restricting a person's freedom. It doesn't have to happen for any period of time, it's preventing them from going where they want to go, holding them where they can't go where they want to go and it can be accomplished by trickery or deceit.

As I said earlier, obviously Kandee Martin would not have driven in that car to her death had she known the purpose of that trip. And obviously between the time she's shot the first time and the time she's shot the second time she didn't want to be there and she's prevented from leaving at gunpoint by Marion Bowman.

The fourth aggravating circumstance I will talk to you about is the murder of Kandee

order to bring back the death penalty. If you find one of them unanimously beyond a reasonable doubt, you would then have the ability if you so desire to bring back the death penalty. But you're not limited to aggravating circumstances. You should consider all of the testimony that you hear in this case.

You can look at Marion Bowman's prior conduct not as a statutory aggravating circumstance, but as a characteristic of the defendant. And when you consider life in prison as an alternative to the death penalty, I want you to consider that he has a criminal record. You've heard that, you've heard from experts and other people and you know he's been convicted of two burglaries, entering people's homes, their residence where they live, taking guns from those homes.

And when he went to court he got a youthful offender sentence. And you'll recall Mr. Aiken testified for the defense, very knowledgeable man, an expert in prison adaptability, and he told you all about a youthful offender sentence. And the idea behind a youthful offender sentence is it's supposed to

rehabilitate or straighten somebody out to put them on the right path. And it didn't work with Marion Bowman because he got out of prison and has now graduated to murder and arson.

I'm going to talk about the mitigating circumstances. And the judge will instruct you to consider mitigating circumstances. And you should consider them. Look at them, you decide what significance to give them if you find that they, in fact, exist.

Judge Goodstein will ask you to consider Mr. Bowman's age and mentality at the time of the crime. As far as his mentality, I'm not going to stand up here and tell you that he was engaging in normal behavior. Murder, ladies and gentlemen, is not normal behavior. He's a murderer. At the time he committed these crimes I believe he was 21 years old, not a boy, he's a man.

The defense put up as part of their case an expert witness, Mr. Youngman, who testified that he's a social worker. And he did a forensic psychosocial assessment of Marion Bowman. He talked to a bunch of people in the community that knew Marion Bowman, he got his

This murder, ladies and gentlemen, was horrendous. It wasn't an act of recklessness, it wasn't a killing in the heat of passion, it wasn't a crime of impulse, it was a cold-blooded murder. And I submit to you that when you kill that way you should forfeit your right to live on this earth.

Marion Bowman, according to the testimony you have heard from that witness stand, enjoyed the act of murdering Kandee Martin. You recall Gadson's testimony. After that second shot, that second, the fatal shot when she fell to the ground, his testimony was Marion Bowman says "Did you hear her head hit the pavement?"

You recall Hiram Johnson, Hiram Johnson went to that beer joint in Kandee Martin's car being driven by Marion Bowman and on the way back before he got dropped off, what did he say? Y'all recall his testimony, Marion Bowman says "I killed Kandee" and then he laughed. Hiram Johnson got up here and basically quoted him. "I killed Kandee, heh, heh, heh." He thought it was funny. And then after that he went back and he burned her car

parts of this trial back in the jury room with you for whatever use you want to make of it, you can look at it or you don't have to look at it. But I request that you look at the photographs that were introduced. I took no pleasure in showing you these photographs. They show nothing more or less than what Marion Bowman did to Kandee Martin's body.

And if you don't look at those photographs, if you turn them facedown, you're not facing the reality of this case. These are in evidence. This is before and after. He turned this into this with malice aforethought. This is his handiwork. So I ask you when you deliberate to look at these. If you can't look at it, then you can't face the facts of this case. And they're hard facts, they're rough facts, they're cruel facts. And I would ask you to look at that and think about a human being and what he did to her for no reason. And he laughed about it. Nothing the defense says when they give their closing statement to you can change that reality.

And, again, each of you raised your hands and took a solemn oath and said in the

charges; criminal sexual conduct, kidnapping, larceny, or robbery. You found him guilty of murder and arson.

Let's look at the facts. Murder was committed while in the commission of criminal sexual conduct. Did Mr. Bowman intend to commit CSC and a murder occurred? What did you hear? You heard from Frankie Martin, he was on that stand, he said Kandee Martin was at his apartment. And who came up? Marion Bowman and Mr. Fogle. They went into the bathroom together, Kandee and Marion. What do people do in the bathroom? Have consensual sex? Because if they didn't, they did come out of the bathroom. Frankie Martin was able to tell you nothing looked different to him, both of them looked okay, they went in her car. You would have heard something from Frankie Martin if anything was different. And they drove away.

What did you hear about kidnapping? Murder was committed while in the commission of kidnapping. Start off with Frankie Martin. They were together at his apartment, they left together in his car. You even heard from Gadson, he got in the back of a car when he saw

want to believe her, I'm talking about Marion's mother. They've seen Kandee. He's rode in her car before several times, and on this particular date he was riding in the car again. If someone is killed and a watch or a car is taken is that an afterthought of murder? The intent has to be simultaneously.

MR. BAILEY: Objection, Your Honor. She's misstating the law to the jury.

THE COURT: I sustain the objection. Be mindful.

MS. HARDEE-THOMAS: You have four aggravating circumstances. You do not have Mr. Bowman having an intent to do any four of them. You have Mr. Bowman who's 21 years of age, you've heard that he's committed two burglaries which is not significant of anything, you've heard that he has family problems and had family problems throughout his life. We ask that you consider that the mitigating circumstances that the State has shown he deserve -- Mr. Bowman deserves your consideration with regards to these and to give him life without the possibility of parole in prison. Thank you.

on that stand when they got other people in the same color uniforms working around the courtroom. They come in and tell you their -- what they see, what they do, how they act. If you believe that there's any chance that Mr. Badillo showed you some sort of human compassion on behalf of Mr. Bowman, I ask you and submit to you to consider that. Twenty-three hours a day locked up, one hour a day out. You heard from Sergeant Branch, you heard about one particular issue as we got close to court. You heard that was a disruption, not anything with violence.

Can he adapt to prison? Can any 20 year old, 21-year-old now person, who knows they're going to be looked away the rest of their life no matter what, do you think they have any reason to not act up, to not hurt somebody or do something? That didn't happen here. You got a kid over there and you got a duty to consider his age and mentality. His IQ is approximately 80, 81 from the evidence presented in here. You be the judge of that.

Is that an excuse? No. Is that anything for me trying to ask you under smoke and mirrors to try to get you to, oh, lessen the

was not presented to you. Her Honor's the boss on the evidence.

Ladies and gentlemen, if there's not an aggravating factor here the last thing is to ask you to show mercy. You cannot bring back the death penalty. You cannot consider just mere character alone to execute this young man. I ask you for understanding, not an excuse as to his conduct. I ask you will we ever really be able to understand any -- and these are just some headnotes, and I promise you I'm on the way down and away from this podium from you soon.

Before we vote for the ultimate penalty, before you take this young man's situation in your hands, do you think, do you feel, do you believe that his young age has anything to do with this? If not, so be it. Do you believe, do you feel that his mentality has anything to do with this? If so, I stipulate that to you.

If you believe that there is any reason to show mercy to this man, that is your province. If you believe in looking at the fact he has no significant history of prior criminal conviction involving use of violence against

Prison is an appropriate punishment for Mr. Bowman because from 21 to whenever he closes his eyes is a death sentence. If you would just consider that and look at it in the totality of the circumstances I'm explaining to you. It is easy, ladies and gentlemen, please, to vote to take a human being's life when you hear how humans treat other humans. Has that ever stopped in this world? Has it ever stopped 'til today? Again, using your common sense, when there were public executions years ago back in the old days, I mean before we were even a country, there were kids pickpocketing crowds as they looked at the execution being carried out.

MR. BAILEY: It's getting off the record. I would object to that.

MR. CUMMINGS: I apologize, Judge, I'll come right back to the record.

You are, ladies and gentlemen, only going to vote on two things today and only two. I ask you today to consider both despite the fact that there is every reason in the world to want to set everything aside and just do what you've been asked to do by one side against the other. Please don't think that I'm standing up

that you will vote. If Mr. Bowman did not do that, don't vote just because it's something you think you should do. Please take your time, please consider every issue here. Proof beyond a reasonable doubt is our standard.

What was Miss Martin doing over at Frankie Martin's house? I don't know. Mr. Martin testified they were alone. Why is there an aggravating factor in here about criminal sexual conduct? Has anybody testified to you in here of nonconsensual relations between a human being and another human being? It doesn't matter whether Miss Martin who is shown in that picture, Mr. Bowman there as seated there happen to be friends.

That is not to anger you, that's not for me to anger you and I apologize. And I raised my voice for a moment to point something out and that is this: You've got to prove, the State has to prove to you folks there was nonconsensual sex. Other than that we just muddy up the water. Again, another reason to pile it on.

Robbery while armed with a deadly weapon. Has anybody testified about a robbery,

make worse; that is, aggravate the offense of murder when the two occur together. In other words, it is something that increases the enormity or adds to the injurious consequences of the offense.

Now, ladies and gentlemen, let me direct your attention to the next sheet which says "Statutory Instructions." Upon this sheet of paper which I hold in my hand are written the words "Statutory Instructions." You will have this paper in your jury room during your deliberations. The body of this form states, and I quote, "In determining whether to recommend that the defendant, Marion Bowman, Jr. be sentenced by the Court to life imprisonment or to death, you may consider the following statutory aggravating circumstances. (1) Murder was committed while in the commission of criminal sexual conduct. (2) Murder was committed while in the commission of kidnapping. (3) Murder was committed while in the commission of larceny with the use of a deadly weapon. And (4) Murder was committed while in the commission of robbery while armed with a deadly weapon.

Now, at this point, ladies and

does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that an aggravating circumstance or aggravating circumstances exist, then you would be authorized, which is to say permitted, to consider recommending to this Court that the defendant be sentenced to death.

If, on the other hand, you think that no aggravating circumstance or aggravating circumstances exist, you should give him the benefit of the doubt and in such case you would make no recommendation of sentence if you find that no aggravating circumstance exists. The Court would then sentence the defendant under the law.

Let me say again if you find that no aggravating circumstances exist, then and in such occasion you could make no recommendation of sentence. The Court would then sentence the defendant under the law.

Now, please pay close attention to this. You are never required to recommend the death penalty even if you find that a statutory aggravating circumstance existed at the time the

offense occurred. However, if you find the existence of a statutory aggravating circumstance, please list that circumstance on the form entitled "Aggravating Circumstance" and all 12 will sign. That is this form. In that event, the jury simply lists the statutory aggravating circumstances that it found and there's a place there for each and every one of you to sign.

Now, Madam Foreperson and ladies and gentlemen, as you will recall the four statutory aggravating circumstances submitted to you for your consideration in this case are: Murder while in the commission of criminal sexual conduct, murder while in the commission of kidnapping, murder while in the commission of robbery with a deadly weapon which we call armed robbery, and murder while in the commission of larceny with the use of a deadly weapon.

First of all, criminal sexual conduct is defined as the defendant engaging in a sexual battery with the victim. Sexual battery is nonconsensual sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body

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or of any object into the genital or anal openings of another person's body except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

Next, kidnapping. Kidnapping is knowingly and unlawfully seizing, confining, inveigling, decoying, kidnapping, abducting, or carrying away another person without authority of law. To do a thing unlawfully is to do it willfully against the law. Knowingly means with knowledge, consciously, not accidentally. Seizing means to take hold of suddenly or forcibly. Confining means to limit, restrict, or enclose within bounds, imprison or shut or keep in. Inveigling means to lure, entice, or lead astray by false representations, promises, or other deceitful means. Decoying means to lure by or as if by decoy. A decoy is something to entice a person into a trip. Kidnapping is to remove a person against her will by unlawful force or by fraud, I should say his or her will by force or by fraud. Abducting means to carry off secretly or by force for an illegal purpose. Carrying away means to remove. Something done without authority of law is something which the

the result of your collective reasoning, thought, and deliberation that you will be entering into in just a few moments.

So, in that regard I want to give you some instructions about what you may consider in making your decision as to which sentence to recommend. Please, ladies and gentlemen, if you have the need to refer to these forms during these following instructions, do that, but do not become so immersed in those forms that you do not pay attention to what I'm about to tell you.

As I previously instructed, if you find the existence beyond a reasonable doubt of a statutory aggravating circumstance, then you are permitted, but not required, to recommend the death penalty. There are three conditions which you should consider in reaching your decision. First, whether the existence of a statutory mitigating circumstance was supported by the evidence; second, whether the existence of any other mitigating circumstance was supported by the evidence; and third, whether for any reason you can think of, or for no reason at all, the defendant should be sentenced

to life imprisonment.

What is a statutory mitigating circumstance? It is a fact, an incident, a detail, or an occurrence which the general assembly has declared by statute would reduce the severity of the offense of murder. In other words, it is a circumstance recognized by statute as one which in fairness and mercy may be considered as extenuating or as reducing the degree of moral culpability for the commission of the act of murder.

A mitigating circumstance is neither justification nor excuse for the murder, it simply lessens the degree of one's guilt, that is makes him or her less blameworthy or less culpable.

What statutory mitigating circumstance should you consider in this case? I'm now holding the statutory instructions. Once again, if you'll take a moment and get there. I refer once again to this sheet of paper entitled "Statutory Instructions." Immediately below the listing of statutory aggravating circumstances which I read to you earlier the text continues, and I quote: "You may also consider the

THE CLERK: Thank you.

THE COURT: All right. I have reviewed the verdict of the jury and find that the verdict upon review of it is in due form and would note for the record that the jury has used two forms, that the jury has used the "Aggravating Circumstances" form and has filled in the aggravating circumstances on the "Aggravating Circumstances" form. It is the same as the other form which I will publish and I will do that now.

State of South Carolina, County of Dorchester, in the Court of General Sessions, indictment 01-GS-18-348, we, the jury, in the above-entitled case, having found beyond a reasonable doubt the existence of the following statutory aggravating circumstances, to-wit: Murder was committed while in the commission of kidnapping, murder was committed while in the commission of larceny with the use of a deadly weapon, now recommend to the Court that the defendant, Marion Bowman, Jr. be sentenced to death. Signed by the foreperson, Ms., I believe it's Lianne Luisi, and the other signatures likewise here attached.

5670

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Case No.: 2006-CP-18-569
COUNTY OF DORCHESTER)	
)	
MARION BOWMAN, # 6006)	
)	
)	
v.)	AFFIDAVIT OF
)	DALE M. DAVIS
)	
STATE OF SOUTH CAROLINA)	
)	
Defendant.)	
)	

FILED RECORDED
2007 JUN 20 AM 8:41
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I, Dale M. Davis, being duly sworn, do state:

1. I perform work as a mitigation specialist in capital proceedings in South Carolina and Georgia. In that regard, I previously worked as a mitigation specialist for the defense in the trial of State of South Carolina vs. Marion Bowman.

2. During the preparation for that case, a request was made for any and all records from the Department of Social Services regarding the childhood of Marion Bowman and his siblings. This request was made to both Orangeburg and Dorchester counties. Orangeburg county referred me to Dorchester County as the last county of contact for the family.

3. Dorchester county provided me with information in response to this request; however, these records only included reports regarding assistance programs such as food stamps and welfare services provided to his mother.

4. Because of a death in my family, I was unable to attend the entire trial; I returned as the penalty phase began.

5. However, it has been brought to my attention that additional records were received from the Department of Social Services during the trial.

6. I was unaware of these records as they were not provided to me to review. Neither was I provided the opportunity to investigate any of the items contained in these records.

7. In the process, I learned that Kandee was known in the Branchville law enforcement community to have been involved in loitering/prostitution activities in the area of Highway 78.

(A) (G)

Ground B

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' failure to object to improper testimony regarding a conspiracy to secrete a firearm wherein no evidence linked Applicant to this conspiracy. SCRE Rule 402, 403, & 404 and *Strickland v. Washington*, 466 U.S. 668 (1984).

Supporting Facts for Ground B

(1) During the verdict phase of the trial, the state elicited information tending to establish the existence of a conspiracy among several of Applicant's relatives to secrete a firearm.

(2) No evidence linked Applicant to this conspiracy. However, admission of evidence that applicant's relatives engaged in such criminal activity improperly suggested that Applicant endorsed or suggested such activity.

(3) Trial counsel failed to object to the admission of such evidence.

(4) But for trial counsels' deficient performance, the outcome of the trial proceedings would have been different.

Ground C

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' failure to object to improper testimony regarding Applicant's character and other acts during the verdict phase of the trial. SCRE Rule 402, 403, & 404(b) and *Strickland v. Washington*, 466 U.S. 668 (1984).

Supporting Facts for Ground C

(1) During the verdict phase of the trial, the State elicited testimony regarding the character and other acts of the Applicant. Specifically, a State's witness testified that Applicant's seminal fluid was located in a mixture found in the victim's vaginal cavity.

(2) During a deposition conducted by PCR counsel, Tawain Gadson indicated that no sex occurred during the time he claims that applicant shot and killed the deceased and that he was not aware of any sexual encounter between the applicant and the

deceased during the time in question before the trial jury.

(3) The information regarding the applicant's seminal fluid being located in the victim's vaginal cavity was irrelevant, prejudicial and improper character evidence which should not have been admitted during the verdict phase of the trial.

(4) Trial counsel did not object to this testimony.

(5) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground D

Applicant was denied the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and17-23-60 by trial counsels' failure to request that the verdict phase of the proceedings should be re-opened after the jury did not find the aggravating circumstance of criminal sexual conduct during the penalty phase of the proceedings. *Strickland v. Washington*, 466 U.S. 668 (1984).

Supporting Facts for Ground D

(1) During the verdict phase of the trial, the State elicited testimony regarding the character and other acts of the Applicant. Specifically, a State's witness testified that Applicant's seminal fluid was located in a mixture found in the victim's vaginal cavity. This information should not have been admitted during the verdict phase of the trial.

(2) During the penalty phase of the proceedings, the government offered that the murder was committed during the commission of criminal sexual conduct. This aggravating circumstance was based upon the information elicited during the verdict phase of the proceedings.

(3) The jury did not find the existence of this aggravating factor beyond a reasonable doubt.

(4) Trial Counsel failed to move to re-open the murder conviction based upon the jury finding negating the claim of a sexual encounter and the improper admission of this evidence during the verdict phase of the proceedings.

(5) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

RICKY DAVIS,

after being first duly sworn, testiied as follows:

THE COURT: Now, Mr. Davis, can you grab that microphone there to your right and let's go ahead, if you would, and give us your name and make sure everyone can hear you.

THE WITNESS: Ricky Davis.

THE COURT: Mr. Davis, speak into the microphone.

All right, Mr. Brown.

MR. BROWN: May it please the Court.

DIRECT EXAMINATION

QUESTIONS BY MR. BROWN:

Q Mr. Davis, were you at some point during 2001 housed in the Dorchester County Detention Center?

A Yes.

Q Okay. And do you know a James Tawain Gadson?

A Yes, I do.

Q And was he also housed there with you?

A Yes.

Q And would that have been on A side?

A Yes, sir.

Q Okay. And at this time I'm going to show you what has been marked Plaintiff's Exhibit 11. Are you familiar with that document?

prepare in regard to Mr. Johnson?

MR. BROWN: We didn't know this information until now.

THE COURT: All right. So, you didn't call Mr. Johnson to discuss that with him? Why did you call Mr. Johnson, about the civil case or what?

MR. BROWN: We called him to talk about his discrepancy in his statement and his trial testimony and we learned new information, which is what a trial is for, to get evidence.

THE COURT: You know, you really have a tough time asking questions without making speeches. What I need to ask is this. What pending charges did Mr. Johnson have at the time?

MR. BROWN: We don't know. This is the first we found out about it. We even asked him --

THE COURT: Did you have pending charges, excuse me, did you have pending charges in Dorchester County in 2001?

THE WITNESS: Dorchester?

THE COURT: Yes.

THE WITNESS: No, sir, only Orangeburg, I never had charges pending in Dorchester County.

THE COURT: Did you have charges pending in Orangeburg County?

THE WITNESS: I don't know. They got threw out, they didn't stay long.

THE COURT: Do you remember when they were thrown out?

THE WITNESS: I don't remember.

THE COURT: Do you know why?

THE WITNESS: My lawyer called me -- no, I don't.

THE COURT: Who was your lawyer?

THE WITNESS: John O'Leary out of Columbia.

THE COURT: Was this involving the shooting that occurred in 2000?

THE WITNESS: Yes.

THE COURT: So, there were charges about that and after that you had sued them for it?

THE WITNESS: Uh-huh.

THE COURT: Those charges in Orangeburg County were thrown out?

THE WITNESS: Yes, sir.

THE COURT: All right. So, that's the information.

MR. BROWN: The same Solicitor's office.

THE COURT: Okay.

MR. BROWN: There is a motion filed by --

THE COURT: What is your question now?

Goodstein before she imposed sentence?
A Yes, sir.
Q And what did Solicitor Bailey say at your sentencing?
A I can't tell you word for word.
Q Did he tell Judge Goodstein that you had testified truthful at the trial and had assisted him in the prosecution of Marion Bowman?
A Something to that extent.
Q And what was your sentence?
A I'm thinking, I'm not for sure, three years suspended to three years on probation.
Q And?
A And community service and stuff like that.
Q Have you still got the deposition transcript up there? Refer to page 53. Starting on line 14, "How long have you known Marion Bowman?"
A "Elementary school."
Q "All right. So, just say the last ten years, did you know Marion Bowman to drink on a regular basis?"
A Yes.
Q The question, "The big 42 ounce ones, bottle of gin?" Your answer?
A "Bottle of gin, beer, whatever."

attorneys, there is no written plea deal. However, Your Honor, there was a request for --

THE COURT: Hiram Johnson, what else that you can think of at this time? Travis Felder, Gadson, whether he was at the scene or not, Hiram Johnson's pending charges?

MR. BROWN: Well, we have also elicited information now that there was testimony changed due to failed polygraph tests. We have no idea to believe they are going to get up here and say, "Yes, I failed the polygraph, I changed my story."

THE COURT: Anything else you can think about?

MR. BROWN: Right now it's not in evidence but we found out Sam in the prosecutor's office has notes --

THE COURT: Who in the prosecutor's office?

MR. BROWN: A guy named Sam in the prosecutor's office had notes to do with the interview of Ricky Davis, indicated Ricky Davis contacted not Marva Hardee Thomas but in fact somebody from the prosecutor's office from the State, giving his version of the confession of Tawain Gadson.

Two, he dates that confession to a time where

WALTER M. BAILEY, JR.,
after being first duly sworn, testified as follows:
THE COURT: All right, your witness, Mr. Brown.
MR. BROWN: Good.

DIRECT EXAMINATION

QUESTIONS BY MR. BROWN:

Q Good afternoon, Mr. Bailey. How are you?
A Fine, how are you?
Q I want to ask you, to kind of get this started, to take a look at what has been entered as Plaintiff's Exhibit 67.
A All right.
Q And are you familiar with that document?
A Yes, I am.
Q And if I may, it is kind of a question out there we all kind of know who it might be, who prepared that document?
A Sam Richardson.
Q And is there any idea when he prepared it?
A There is no date on this thing. I can tell from the context of it that it was fairly late in the proceedings. It wouldn't have been too far from the time of trial.
Q What I want to kind of do is go through and

What I was frightened of, there was no evidence against Marion that he bought the gasoline, that he poured the gasoline, that he did anything about burning this young white female in Dorchester County, and I attacked Travis the way I attacked him. You read it. I have re-read it now preparing for my testimony today, but I felt that if I played that tape, Walter Bailey didn't play that tape and for whatever reason the Solicitor didn't play it, and so if the Solicitor is not trying to put the tape in, I'm saying either Walter forgot it, didn't use it, or I'm not going to play the tape to show that it might corroborate my poor kid being involved with this plan to murder, burn this little girl and the car. That was my theory, Mr. Brown, that was it.

Q And the theory was Travis lying?

A Everybody is a liar. I mean, I hate to say that, sir, I know I'm an officer of the court here, but everybody cut a deal except my poor kid.

Q Sure. And we're going to try to kind of go into that. That is the next thing I was going to ask you. Focusing on the buying the gas, Travis --

A Yes.

Q The idea that Travis is lying?

worried about everybody corroborating that Marion had a part of buying gasoline and burning this girl in the car.

Q And I will stop you, I want to make it crystal clear. You watched this tape with Marion Bowman?

A I believe so, yes, sir, I watched it at the jail.

Q Is there a chance you are mistaken about watching it with him?

A I don't believe so, sir, because I think we argued there at the end of the guilt phase, Marion demanded the tape be put in and I called Travis Felder back up there to have him identified as the one buying the gasoline.

Q Let's follow up on that. You put Travis Felder back up on the stand to bring out the fact he bought the gasoline at the insistence of Marion Bowman?

A That's correct, sir.

Q Okay. And that was done after he testified, is when you all had this argument?

A Yes, sir, had to bring him back.

Q Okay. And while we're on this, when he was brought back what kind of, if any, meeting was

long as this post-it note belonged to this booking report. The booking report normally wouldn't have a post-it note on it.

Q I understand. Since the judge is the jury we reference back to Detective Coker's testimony regarding the introduction of that evidence.

THE COURT: Is that word in store 2:56 , 2:58 out?

MR. WATERS: That would have been the chips and dip trip. We don't know when that post-it note was put on there.

MR. BROWN: We do know Lieutenant Coker said that was his post-it note and it was in his file, on the document in his file.

THE COURT: As I recall the testimony, he got that information from the tape or from Mr. Felder telling him?

MR. WATERS: He didn't remember. I mean, that is his post-it note, it has the times on there and that is his writing.

MR. BROWN: The times correspond with the little clicker on the convenience store tapes, 2:56 and 27 seconds.

THE COURT: Does the tape show him buying the chips and dip?

MR. WATERS: Yes.

THE COURT: The tape has a time on it and the time is about like that time?

MR. BROWN: Exactly.

MR. WATERS: 3:14 is when he subsequently returned to get the gasoline. That was in the penalty phase testimony.

THE COURT: Seventeen minutes later?

MR. WATERS: That's correct.

THE COURT: Okay.

THE COURT: The store is like a mile in the projects, a mile and a half.

THE COURT: Okay.

BY MR. BROWN:

Q Now, assuming that you were provided that and you would have read it because it was contained in Detective Coker's file, does that give you an indication that Travis Felder was in the store, at these times?

A Yes, sir.

Q All right. And you see a figure wearing the clothes that he's wearing come into the store at 2:56, leave at 2:58, then you see later on, the next, not the very next purchase from that store at 3:15, ballpark, the same figure comes back and has

Gadson to show that the State was threatening him with death penalty murder but he didn't do anything?

A The way you ask that question, yes, sir.

Q Because like if I threatened to do something to somebody but they didn't do anything wrong it is just a flat threat, isn't it, it is not a deal, it's a threat?

A It is a threat. Hopefully Mr. Dukes would have -- I don't know, I don't know why Mr. Dukes let him sign the sheet. I know why, it saved his life, to get away from being in the possibility of death penalty.

Q So, if he testified at trial he didn't do anything --

A If the jury believed that, that is the next thing.

Q But if Mr. Gadson says, "I'm just there," but he did something that made him liable for murder, than the fact he says, "I was just there and didn't participate," that is not true, is it?

A You're asking me again in that arena whether or not the jury is going to believe him. No, you know what they believed, they believed that little white girl was dead and then burned and somebody

A You prepare by cross-examining by their written statement and by the facts you know from what you learn.
Q Excellent. All right, let's look at his written statement. And if you would, take a look at what has been marked as Plaintiff's Exhibit 5 and Plaintiff's Exhibit 6. Do you recognize those? They have been entered in evidence.
A Yes, sir.
Q Okay. Can you show me in those statements where Mr. Gadson says there was sex on Nursery Road between Mr. Bowman and Miss Martin?
A He doesn't.
Q Okay. So, why didn't you ask about the lack of sex, why didn't you ask Mr. Gadson about there being no sex between Miss Martin and Mr. Bowman?
A I will say I did not ask the question but here is my theory and this is what I want to show. Marion and Kandee were friends, they were intimate friends, if I can use the words. I wanted to show that this man would not hurt that little girl because he cared about her and that she was an intimate friend of Mr. Bowman's. So, anything that the State wanted to try to show dirty about their intimate relationship was that, again, black versus

say my guy shot that little girl.
Q You didn't interview him, either?
A No. I wasn't allowed to by his lawyer.
Q Did you ask Walter Bailey to interview his witness, I mean Walter's witness?
A I asked the defense attorney, I didn't ask Walter Bailey to interview the State's witness, now.
Q And let me ask you, if Walter would have told him to speak with you under this plea agreement that says he has to cooperate, he would have had to have spoken with you, wouldn't he?
A Cooperate with the defense?
Q Cooperate with Mr. Bailey. If Mr. Bailey said talk to Mr. Cummings, then Mr. Gadson would have had to do so, wouldn't he?
A You say that. I don't know that to be true. I don't think he had to cooperate other than to tell the truth and cooperate with the State to provide testimony.
Q It says testify truthfully or cooperate, doesn't it?
A Right.
Q It actually is an alternative?
A Yes, sir.

or the paragraph ten deals with the fact he is not able to omit facts or any way give benefit to himself --

A Excuse me, sir. That is the contract he signed with the State.

Q That's right, and that didn't come out until after the trial, did it?

A From what you showed me and what I have read and what I have learned through this case, yes, sir.

Q And then on July 17th of '02, that's the date of his sentence, if he gets the benefit of the deal despite that omission, then that is something of interest?

A Yes, sir. It's unfair.

Q And it's unfair that -- it is unfair you weren't able to reveal that to Marion Bowman's jury, isn't it?

A It is unfair totally. I didn't want Marion to ever face that, much less, you know, be to face death, much less be sentenced to death. And I know Mr. Bailey had offered life to us, Mr. Brown, and even on the record gave him two weeks to reconsider it. Life was offered seven times to my client and, you know, begging, I begged him to take it and even

A Indicted by the grand jury of Orangeburg, date, April 17, 2003. Arrested May 29th, '01.
Q And they indicted him? Indictment means it's in court, right?
A Yes, sir.
Q Did they actually bring it up?
A Less than a thousand, you know.
Q But it's within the perview of the prosecutor?
A Yes, sir, up to the Solicitor to present cases to the grand jury.
Q And at the time of the testimony in May the prosecutor had that same, May of '02, he had that same pending warrant that he later exercised?
A Solicitor of the First Circuit has the power of the First Circuit, yes.
Q And does that present some bias regarding Hiram Johnson's testimony against Marion Bowman and on behalf of the First Circuit Solicitor's office?
A I can't speculate to that but I would say it shows, all I have is the rap sheet, it shows that he was, 12/19/97 he was convicted of unlawful possession of pistol.
Q It doesn't show that warrant?
A No. As a matter of fact they didn't have the

interest is discrediting him, right?
A Again, under the rules of evidence for impeachment purposes I think I impeached him based on his injury to his head and cooperation with the State, but not based on a misdemeanor warrant.
Q How about under a bias, under 608?
A All this was under bias, everybody cutting a deal, it was under bias.
Q And I want to make sure, you didn't get evidence --
A I don't remember, Mr. Brown, I say with all candor I don't know if a warrant was held in the Sheriff's Department, I don't know if it was held by a policeman in a car. You know, I don't know why he wasn't indicted until April. I know Orangeburg has a busy case volume, I know that personally, but respectfully, I don't know if somebody cut him a deal where they held the warrant until after his testimony or held the indictment. I don't know that, sir.
THE COURT: Refresh me about the warrants in Orangeburg that were pending, that were dismissed years later.
THE WITNESS: It only shows the one conviction.

Q Now, 5/29/01 is the magic date on the arrest on that receiving stolen goods, isn't it? Exhibit 48.

THE COURT: As for as before trial?

Q A year before trial.

A I don't have 48, sir. Has somebody taken it back?

Q I'm sorry. It is sitting right here.

THE COURT: He was arrested on 5/21/01 for receiving stolen goods.

Q 5/29/01 is the magic day, isn't it?

A Yes, sir.

Q Now, would it have been important to find out he was also arrested for grand larceny and burglary second on that same date, within the First Judicial Circuit?

A Yes, sir.

Q Because that's impeachable?

A Sure. Again arrest, not convicted, yes, right.

Q How about currying favor with the party calling him as a witness and he is also simultaneously prosecuting him?

A I would have asked questions about don't you have charges pending in Orangeburg or Dorchester

County and if her honor would have sustained the objection, at least I would have had it on the record. But I would have, I did it with other people.

Q "Isn't it true you," this is a type of cross-examination, "you face fifteen years for burglary second"?

A Right.

Q Or five or ten years for grand larceny?

A I have had, again I say this with highest candor to the judiciary, I have been yelled at for doing that and I have been told you can't tell about penalty, it's in the judge's province.

Q Sure, but --

A But I have been allowed to say, "Haven't you been arrested for burglary, convicted of burglary?"

Q In this case they weren't convictions but ask him, "Isn't it true that Solicitor Bailey is prosecuting you and you have some bias to curry favor with his office"?

A Yes, sir. I did that, and again with the highest respect to you, sir, in the Gardner case I had Judge Ralph King Anderson as the trial judge and when George, Chicken George took the stand, it's in the appellate record that he was afraid of

Q And at least you can say to this fellow, "You have got reason to curry favor with Solicitor Bailey, don't you," because that would be true, wouldn't it, he had a reason to, I didn't say the Solicitor had agreed with it, although we do know later he had serious charges thrown out?

MR. WATERS: Your Honor, I object to the leading and the statements, all.

THE COURT: I overrule your objection. I mean, I know what Mr. Brown is getting at but as Mr. Brown knows, all this would have been done before a judge before any jury had a chance to hear anything at all. There had to be some evidence of some deal going on, it may or may not have worked.

THE WITNESS: And all I can say again, the defense, as a defense attorney I would do everything to get everything and do everything you can do in a court, and I should, as we all know.

BY MR. BROWN:

Q And again we need to impeach Hiram Johnson because he gives a statement that says, "I heard him confess to killing Kandee"?

A Yes, sir. Yes.

Q Now, do you recall Hiram speaking with law enforcement?

the State's or mad at the State?

THE WITNESS: Yes, sir, correct.

BY MR. BROWN:

Q I don't know where item 67 is, but the Sam memo right here, not to beat a dead horse but I have to ask you a little bit about that. That Sam memo, I want to make sure, what if you found out that after Mr. Mitchell interviewed Mr. Davis and came back and told you Mr. Ricky Davis was not a good witness or whatever it was he said?

A Right.

Q And I assume there is no note of this?

A Mitch sent us back a letter on stationery or he came by the office and said he was -- it should have been somewhere.

Q What if you found out that Ricky Davis reaffirmed his statement after Mitchell's interview?

A I was never told that. All I can do is send an investigator up to Leiber to go talk to him.

Q Now, when you cross-examined Tawain Gadson, one of the things you talked about was what sentence he would get pursuant to the plea deal, twenty years?

A Yes.

Q Okay. Why didn't you tell, cross-examine him about the fact that he faced a death sentence?
A You asked me that before. I cross-examined him, it was murder, I didn't know if the Solicitor had ever served the death penalty notice on him.
Q They threatened him with it?
A They threatened.
Q Why didn't you tell the jury he had been threatened with his life?
A I guess it didn't flow from my brain at that time, I'm sorry, no strategy, clearly.
Q Excellent. Now, what evidence did you rely on to prepare a case without believing that Tawain Gadson's .380 was the gun that killed Kandee Martin?
A I relied on the SLED experts, my cross-examination, on the breach markings, I relied on the fact that the gun had been reported stolen, there were no comparisons. Mr. Bailey and I argued about that under State versus Lyle and a few other things, then we did some other further arguing about whether or not the gun found mysteriously in Dorothy's house or chair belonged to my client or not.
Q I want to make sure. You mentioned a couple

A I don't know. It didn't come in.
Q Was he given instructions to stay away from the drug use?
A You have to take that up with the people that interviewed him other than when I got him on the stand and what I did. I stayed away and I walked that tight rope as tight as I could, but I have learned something in these years, and again with highest respect and candor, I'm not going to portray my guy as the reason why she's dead, dope, sex, drugs. I mean, I'm making the State prove their case.
Q And I want to ask you about that. Tell me about your understanding of the burglary and Kandee.
A Well, the testimony was going to be that they all went out there and cased the Nursery Road, go out there and hit a house. A burglary in the nighttime is one of the nastiest felonies we have except for murder and CSC.
Q Sure.
A So, great, they're going to be out there pulling a burglary.
Q How does that tie in with the aggravater of the kidnapping?

A We have the broadest kidnapping statute in this state in the union, as we all know, embagle, convey, decoy, any of that. If she went with them by trickery or deceit that could be kidnapping if the jury were to find the elements of kidnapping as given by our judges.

Q Is that your understanding of what the allegation of aggravation was here?

A I want to say this outloud and with Marion, what are you doing on Nursery Road at that time of the morning with a white female and African American males in Dorchester County? Really. This is 2001 but what good are you doing out there on a dirt road? Okay. And we have all the homeowners calling us saying they heard shots, then they come out and they find a burning car. So, that's the way this thing portrayed. The fire department comes out, as you know. I have read this file backward and forward. If he's there he's a principal, if he's in the car. If he's not there, how does all these facts get known, how are all these facts to be told?

Q What I'm trying to find out is first state of mind.

A First state of mind she's dead.

a burglary.
Q If Tawain believed that?
A If he believed it.
Q If he came in court and says he believed it?
A Then they are, they are all burglars, attempted burglary or they are planning conspiracy to commit a felony.
Q The difference is not whether a murder happened, but whether a kidnapping murder happened, right?
A Yes, sir.
Q Okay. I want to ask this one question on this because you asked why would she be out there in a desolate area, paraphrasing?
A Right.
Q Is that a place for somebody to go out there and smoke crack?
A I wish they would have picked eight miles difference, in Orangeburg County, we wouldn't be here today.
Q But somebody who uses crack is not going to go out and use it in a public place as much as a private place, would they?
A To answer your question, that's up to the people who want to do illegal drugs. I can't

answer that but I would say most people stay inside and do it so they don't get arrested by the police. A dirt road, a cop car comes down the road at that time of the morning, they are going to stop to see who is out there. But again, why people do things that they do, we get the after effects.

Q But use of crack on that road by Kandee, is that somewhat relevant to whether she felt embagled or whether she felt she wasn't embagled?

A From reading all the statements and all the worries that I had on this case, including I believe my client's words were forced out of him, it felt more like this was planned to bring this girl out there and dispose of her.

Q And planned by who?

A If you believe the two statements that were suppressed, by Marion and Gadson.

Q I want to make sure we understand. I'm going to stop here, but you believe Gadson had something to do with it?

A Yes.

MR. BROWN: This is kind of a stopping point. That leads right into Gadson.

THE COURT: Okay. Now, as you know, Mr. Cummings, please do not discuss your testimony,

fact this was obviously a murder. One thing I would ask, I want to talk about Tawain Gadson. Tawain Gadson took the stand, testified, the primary witness regarding the murder. Do you recall the instructions that he was given about testifying about Kandee Martin smoking crack on Nursery Road?

A Instructions, no, sir, I don't remember what instructions he was given other than I believe Mr. Bailey starts off by saying, you know, "You're not given any deals, you're here to tell the truth." That is all I remember about what Walter might have said. I know you will ask him that.

Q Did you all reach an agreement that the crack smoking was not supposed to be talked about?

A The best of my recollection --

THE COURT: When you are referring to the crack smoking --

Q I'll give a little basis. She had been using drugs?

A There was stuff found in in her body at the forensic autopsy.

Q The jury never heard that information?

A The best of my information, no.

THE COURT: Not even in the autopsy?

MR. BROWN: It was revealed in the autopsy but not in the trial.

THE COURT: I'm saying the autopsy never came in in front of the jury as for as the findings?

THE WITNESS: No, sir.

MR. BROWN: No, sir.

THE WITNESS: I did want to keep parts of that out, you know, what the condition of the body was as well as there was an issue that I was very cautious of, Mr. Brown, about whether or not people had ever touched Miss Kandee Martin in a certain way, degrading, sexual way.

BY MR. BROWN:

Q Let's talk about that a little bit. I think we had -- well, we're going to get into that. Let me back up. The jury never heard anything about Kandee Martin being a drug user?

A The best of my recollection that's correct.

Q All right. But you knew about it?

A Yes, sir.

Q And in fact, gosh, I late to speak ill of the deceased but she, there was some general reputation information she used drugs and/or prostituted herself or a combination of the two?

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the court to you, sir, and everybody in here is officers of the court, hurting the victim I think would have hurt Marion more, maybe helped him a little bit evidentiary wise that she did dope. What I was worried about, I guess, where she got her dope from, and everybody in the world knew, and it came out in the penalty phase also, that Marion lived on the street, he was self supporting, he tried to find ways to support himself and he sometimes delved into something he shouldn't have delved into.

But I also had the horrible experience dealing with the Missy McLaughlin trial where that lady was also accused of using her body for drugs, and believe me, it didn't sit well with that jury.

Q And let me, I want to probe a little bit of that. The jury actually found out before they issued their sentence that Marion Bowman sold drugs?

A In the penalty phase everything comes in, we all know, character, bad character. The trial flowed the way it flowed.

Q But the information that Marion dealt drugs came out through you all's witnesses on direct, you asked --

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Q It was right before the birthday?
A Right.
Q That according to Tawain Gadson she made that statement?
A Yes.
Q My question is this. Does it not present a forward context of her mothering to show that she was a crack addict?
A Again, I guess I could sit back and play Monday morning quarterback now and say, you know, attack the victim, the jury has already found him guilty, you know, I could sit here and say that. If I made an error I apologize. If I didn't vigorously cross-examine to help Marion, then I made a mistake and I apologize, but I flowed with the case the way I thought I should have done it. Whether our courts want to call it strategy or a choice not to attack the victim any more than we did, she's dead.

We also learned she had another child somewhere that was given away or done something else with.

Q Well, let me ask you about that. You did hear that information?
A Yes, we heard it. I couldn't get any help

from anybody to prove it. We did our own street stuff around, had investigators go to try to find, you know, where the child might have been, who was raising it, and that is what you do, you just try.

Q And bear with me a little bit. Now, this child was about three years old, right?

A I'm trying to remember. Seven years back, I would say whatever you tell me the age is, it sounds about right.

Q The record speaks for itself.

A Right.

Q And at the time of her death she was --

A A young mom. I don't remember Kandee's age off the top of my head.

Q About twenty years old?

A Right.

Q And she had been pregnant for a year, so we're talking about somewhere around the age sixteen that she would have been pregnant?

A At the very beginning, the first time in her life, yes, and as a minor she should have been protected.

Q Let me keep going with this. This other child that was given away --

A If that is what really occurred. I know she

didn't have physical possession.
Q But there was no question she had another child?
A In my opinion, no, sir, there was no question, plus I believe Marion or the family told me she might have had another baby, one of his sisters maybe.
Q By the time she's twenty we're talking about two children?
A I would say at least to my personal knowledge, yes, sir.
Q Okay. Which -- and again I want you to understand when I talk about this evidence coming in to provide a picture about the victim impact I want to make sure you're aware I'm not talking about attacking her, I'm talking about being truthful because it is unusual that victim impact goes to a jury, in fact it is only in capital cases that I'm aware of?
A That is the only time.
Q In sentencing?
A Right.
Q That actually was a change in the law however many decades and a half ago that allowed this?
A Yes, sir.

Q This type evidence, the State wants it in because it allows them to give a factor to impose death?
A Correct.
Q Because when they weigh the appropriateness of death as a punishment they can consider all of those facts, including the imapct that the victim's loss of life has?
A That is what the Legislature decided, yes.
Q So, what it was, logically if the impact of the loss of the victim's life was not as great it may weigh less toward the appropriateness of a death sentence?
A And it is almost like you're pitting witnesses, or pitting their value of their lives, the white girl versus the black young man who allegedly shot her, and that is what you try to hopefully avoid but that is what occurs 90 percent of the time.
Q Well, let me ask you, you were a prosecutor at one time?
A Yes, sir.
Q And in murder cases one of the things that, that is, the victim's character, for lack of a better word, is that not something that is weighed

go farther?

MR. BROWN: I didn't want to stop him. In another hearing I was told not to.

A I think it is horrible to do that but I think society does it. Again I think it is unfair and I hope it did not prejudice Mr. Bowman at all in his case.

Q But again, those are two facts, one fact she had used drugs even if it is a minimum, there is no question that she had used drugs?

A No question but again, and here is the throwback on that, what you have to weigh. Do you think somebody deserves to die, I'm not asking you this question, sir, but a rhetorical question, do you think somebody should die for the use of dope?

Q I understand.

A Now, there was also one underlying thing here. Again this is in response to your question. If you believed everybody in this case, including Mr. Bowman's sister and family, that she was going to be dead by dark because she was going to rat him out for selling dope, so that was the biggest landmine that this lawyer wanted to avoid. So, if you mentioned dope it might have opened up the door if I had mentioned that she was using. Who did she

go farther?

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get it from? And of course --
Q How about in the penalty phase, though? You only get there if he has been convicted.
A Oh, yes, and you're absolutely correct on that but in the penalty phase I still didn't want to portray Mr. Bowman as being the drug dealing kid that nobody cared about, that would take a life because somebody ratted him out for selling dope.
Q Now, let me ask you, would the drug use not be relevant to the issue of her state of mind in the penalty phase, for the kidnapping aggravator, right, it wasn't actually a grabbing kidnapping?
A Yes, sir. We have the broadest kidnapping statute in the country as I'm aware of.
Q Sure.
A And further, if you want to argue the state of mind, they were going there to do a job, that is another thing that was coming out, so-called burglary, you have got people burglarizing houses in the neighborhood in Dorchester County. Any way I turned on this thing I was stepping on a landmine, and I knew that.

But again, if I made an error I apologize, I tried that case and in the penalty phase the best I thought I could get out of the mileage with what

as a witness.
Q Well, let me ask you to take a look at his, what has been marked and entered as Plaintiff's Exhibit 8, which is his mental health evaluation, and let me ask you if you recall ever finding out, I'm going to just hit a couple things, that he smoked marijuana all the time, every day, and I'm kind of generalizing on that, and that he also suffered from blackouts and had verbal memory impairment or heard beeping noises or a voice?
A I'm trying to remember if Marion told me about him being a doper, for lack of a better word, you know, to make it quick and easy, and I thought Marion told me he basically wasn't all there.
Q And let me ask you, have you ever -- well, let me --
A You had a question about this document. I don't remember seeing this document.
Q Okay.
A All right.
Q Or receiving it in discovery?
A No, sir, I don't remember that.
Q Now, again, there is no question Tawain Gadson is the sole claimed eyewitness to this

8, which is Mr. Gadson's DMH report.

THE COURT: Mental Health?

MR. BROWN: Yes, sir.

THE WITNESS: Do you want that, Your Honor? It deals with Mr. Gadson, his own claim that he hears voices, blacks out, I can't remember. It's in the report.

THE COURT: Mr. Cummings made a choice not to bring that up?

MR. BROWN: Just the opposite.

THE WITNESS: I hadn't seen the document. I hope I would have brought that up.

THE COURT: You didn't know about it?

THE WITNESS: No, sir.

THE COURT: Did the State have it?

MR. BROWN: We finally got it from the State.

THE COURT: Your argument is the State should have given him something that is exculpatory?

MR. BROWN: Yes. That is raised in our third, impeaching, not exculpatory, borderline exculpatory.

THE COURT: Why not use it to impeach him rather than exculpatory?

MR. BROWN: In this case it would be used for both, to impeach his general credibility and his

Gadson to show that the State was threatening him with death penalty murder but he didn't do anything?

A The way you ask that question, yes, sir.

Q Because like if I threatened to do something to somebody but they didn't do anything wrong it is just a flat threat, isn't it, it is not a deal, it's a threat?

A It is a threat. Hopefully Mr. Dukes would have -- I don't know, I don't know why Mr. Dukes let him sign the sheet. I know why, it saved his life, to get away from being in the possibility of death penalty.

Q So, if he testified at trial he didn't do anything --

A If the jury believed that, that is the next thing.

Q But if Mr. Gadson says, "I'm just there," but he did something that made him liable for murder, than the fact he says, "I was just there and didn't participate," that is not true, is it?

A You're asking me again in that arena whether or not the jury is going to believe him. No, you know what they believed, they believed that little white girl was dead and then burned and somebody

did it and they wanted that somebody. That is what I believe and it was horrible, it was a horrible, horrible trial and I wanted to save a young man's life as well as try that case, and then everybody testified against Marion.

Q Is there not residual, then, even in the penalty phase to show that Mr. Gadson was, says he didn't do anything but he was threatened with death murder and Mr. Bowman is going on trial for death murder and Mr. Gadson is going to be in effect eligible for parole in five years and gets out less than five?

A Whatever I said in that trial, Mr. Brown, again I cross-examined him, whatever I did in the penalty phase I did. I don't know how to explain it to you. Do I wish I would have done a better job? Probably. Do I think I did a bad job? I hope I didn't.

Q Did you know that, did you know that he was threatened with re-installing the murder charge and seeking death and waived objections to death? Did you know all that?

A I'm used to proffers, I'm used to the federal system, that if you change one iota they pull the deal out from under you and you're back to square

didn't have gasoline on his clothes and the pants they found had kerosene on them and I got his wife to admit, "We heat the home with kerosene." That's what I used it for.

BY MR. BROWN:

Q Let me make sure we get the context right. You didn't call this witness to show it was not him with the gasoline?

A I used the State's witness to show that those pants, okay, which were found, the watch and all the other stuff that I believe hurt our case tremendously, that the gasoline used for the accelerant to burn the body in the car was not on his pants, so --

Q Let me ask in a different way. If Mr. Bailey would not have called Mr. Layton because he didn't find any probative value to his testimony would you have called him?

A Yes, probably would have, and the way I would have done it, I would have put him up and said, "What did you find on his pants?" "Kerosene." "Thank you very much," and he sat down.

Q Would you call him to exclude Marion as an arsonist?

A No. You couldn't exclude him from being an

close, Kendra.
Q How about the State's theory she was a snitch?
A That's the main thing that was out there.
Q She had a reputation she was involved in the drug business?
THE COURT: It doesn't tie it into prostitution.
Q Well, we'll get to that. Certainly you knew she had a conviction for possession of drugs?
A Yes.
Q And that she had been involved as a witness in an indecent exposure case involving sex on the town square of Branchville, that came out of this same courthouse we're standing in?
A I don't recall. I think she was a witness.
Q I think she was the other party in the sex act.
MR. WATERS: Your Honor, I object.
THE COURT: I sustain. Let's go on to something else.
Q Here is the point I'm getting at.
THE COURT: Can you just ask him questions?
MR. BROWN: I sure can.
THE COURT: Obviously, remember I'm going to

be hearing your closing argument, I don't need to hear it two or three times.
BY MR. BROWN:
Q The watch you referenced, which is a bad piece of evidence?
A Yes.
Q Okay. There is no question that the watch was linked to Kandee by a receipt that Kandee's mother brought in and said, "I bought it at Walmart and gave it to my daughter"?
A Yes, sir, and I asked how many watches are sold at Walmart and did all that without trying to hurt that mother.
Q Okay, sure. And let me just ask you this. If the jury would have heard about her drug use, even without any reference to prostitution, if they had heard about her drug use would there have been a fair argument from the inference and facts then before the jury that she could have traded the watch for crack?
A Yes, you could argue that, and then who gave her --
Q Who all were her suppliers?
A Or the fact maybe Marion is now, and again this frightened me, and I'm going to say this, what

social redeeming value would he have if he is a drug dealer, too?

Q You brought that out in your own witness?

A I had to. Finally after everything comes out I had to do it.

Q That was your first witness?

A It wasn't my first witness.

Q First witness in the sentencing phase?

A In the sentencing phase, yes. He is already found guilty, now I'm really trying to save his life.

Q That is my question, why can't we bring out Miss Martin's a drug user in the sentencing phase? Would it have been another felony on him the jury had a chance to look at?

A You paint that lady dead, she's dead, she got burned. This is, I'm telling you,Mr. Brown --

Q But --

MR. WATERS: I ask he be allowed to finish his answer.

A I don't know how to say that, to paint that picture to twelve people up there that don't look like him.

Q You think it is good to have the witness bring in the fact he is a drug dealer when there is

no charges or convictions for drug dealing but you did?

MR. WATERS: Objection, argumentive.

THE COURT: I think it is going to be quicker to keep going. You all seem to be arguing back and forth.

MR. BROWN: I apologize.

THE COURT: Why can't you just ask him question and he answer? You don't have to tell him you agree or not.

BY MR. BROWN:

Q Okay. Again, the argument could have been made if the watch was traded for crack they would have known she was a crack user?

A Yes.

Q All right. That will keep it simple. Now, one of your, let me get to these, tell me about the testimony that came out at trial about you don't put up an adaptability expert.

A Yes.

Q He talked about Mr. Bowman's opportunity to adapt.

A It has been the same argument throughout the last ten years in this state, what are his present conditions, and the Supreme Court is coming out

A You prepare by cross-examining by their written statement and by the facts you know from what you learn.
Q Excellent. All right, let's look at his written statement. And if you would, take a look at what has been marked as Plaintiff's Exhibit 5 and Plaintiff's Exhibit 6. Do you recognize those? They have been entered in evidence.
A Yes, sir.
Q Okay. Can you show me in those statements where Mr. Gadson says there was sex on Nursery Road between Mr. Bowman and Miss Martin?
A He doesn't.
Q Okay. So, why didn't you ask about the lack of sex, why didn't you ask Mr. Gadson about there being no sex between Miss Martin and Mr. Bowman?
A I will say I did not ask the question but here is my theory and this is what I want to show. Marion and Kandee were friends, they were intimate friends, if I can use the words. I wanted to show that this man would not hurt that little girl because he cared about her and that she was an intimate friend of Mr. Bowman's. So, anything that the State wanted to try to show dirty about their intimate relationship was that, again, black versus

white, white with a black male, that Mr. Bailey was trying to get the ultimate penalty and yet they where friends.

Q Hold on one second.

A That is what I did.

Q Well, now, Mr. Bowman is married to someone else, isn't he?

A Oh, yes. We talked all about the adultry and all the other stuff, and you read the transcript.

Q We --

A My partner and I, Miss Thomas and I, she is chair two.

Q You all talked about adultry?

A Oh, yes.

Q Tell me about, to make sure it's clear, Mr. Bowman is not married to Miss Martin?

A Not that I'm aware of. He never told us that.

Q That would be fornication, too, wouldn't it, which is another crime in South Carolina?

A Bigamy?

Q No, fornication, sex without being married.

A The jails would really be over populated, wouldn't they? I understand.

Q I doubt the judge is going to concede that is

clerk for a year and of course I try to learn what is being presented and what the judges are ruling on and try to keep up with them.

Q You had alluded to this earlier, but Mr. Bailey the Solicitor in this case made a plea offer to your client. Is that correct?

A Yes, sir. And again I say this and it really hurt my feelings, life was on the table seven times for Marion and I begged him to take it. Of course the other she is if the man is not guilty why would he plead to life? But looking at the facts in the totality of this case, I begged that kid, I really did. I know that is not my role as a lawyer today for a PCR but I really begged him to save his own life, I did, and I brought every offer to him every time, and I had witnesses, brought his mama back, "For God's sake, beg him."

Q I'm going to show you what has been marked as Respondent's 15, or what will be.

A Defendant's Exhibit 18.

Q Ready?

A Yes, sir.

Q I show you what has been marked as Defendant's Exhibit 18, which is a letter from Mr. Bailey to you dated August, 2001?

Judge Goodstein in which the possibility of opening the door was discussed?

A Yes.

Q As to this?

A Not just this, yes, anything.

Q Well, describe what happened.

A Well, again, Her Honor wanted to make sure Mr. Bowman was protected, Her Honor wanted to make sure that in my zealous, sometimes verbose manner of attacking people or presenting things that I did not open up the door. She had suppressed these matters but warned me, told me, "You make a mistake, it may come in." And Mr. Bailey was like, was like a hawk waiting on lunch.

Q In fact Mr. Bailey said that?

A He wanted that in there so bad that that young African American male wanted to go play with a dead girl, oh, my God, think about that. Okay? All he -- he wanted that desperately.

Q Your assumption if it came out?

A Oh, it's over.

Q So, your concern was if you admitted evidence of a mental health nature the State could respond and call Dr. Narayan and some of that report could come in?

court, he goes first.
Q Here is my question. What fact was that relevant to?
A relevant to show that he and her were lovers and friends.
Q I'm talking about Mr. Bailey.
A Mr. Bailey?
Q What was relevant for him to put it up at all?
A I think he stepped over the line. I know what he wanted, a black man and white woman having sex, we both know what that is. I cleared it up, in my humble opinion.
Q You made the best --
A I made the best of it.
Q Him playing dirty?
A That's right.
Q All right. Now let's talk about the work record, and I ask you to take a look at Plaintiff's Exhibit 76. Would you look at the dates on that form, that work sheet?
A Yes, sir.
Q Now, generally what is the age somebody is allowed to work?
A It varies, whether it's family, whether it is

Q A couple parts to this I have a question about. The part about the other people having sex, I think you said was unsubstantiated?
A Yes.
Q Okay. So, Mr. Bowman had said other people had sex with her, that is an unsubstantiated statement?
A Yes. How many times do I have to say it, Mr. Brown? Unsubstantiated. He's the only one said it.
Q Is there anything else that serves as a basis for belief that Mr. Bowman had sex with her during the res gestae of the murder?
MR. WATERS: Objection, asked and answered.
MR. BROWN: Okay.
THE COURT: He has given you all he can give you on that, or all he's going to give you.
MR. BROWN: I just have to make sure.
BY MR. BROWN:
Q Let me ask you about Tawain Gadson's mental health evaluation. Did you ever provide that document to Mr. Cummings or Miss Marva Hardee-Thomas?
A I don't believe I did.
Q And Mr. Gadson talked --

A Talked about marijuana use.
Q And having blackouts?
A Yes.
Q And hearing a voice. Do you know what the voice told him?
A I sure don't.
Q And that he heard a beeping noise.
THE COURT: Are you talking about information within the mental health evaluation?
MR. BROWN: Of Tawain Gadson.
Q There is some impeachment value to that, to his credibility?
A Arguably there would be some impeachment value there, yes.
Q Okay. And it could either be that this guy can't, he has blackouts, hears voices, or that he lies about it?
A Well, I think he testified at trial that he passed out in the car on the way back from Allen Murray Club. He had been drinking all day, so the record is replete with evidence of intoxication or alcohol abuse during the time this occurred.
Q Let me ask you, because that is, the blackouts we're talking about are blackouts like loss of consciousness and I didn't read it to be

don't recall when that went out, out of my office.
Q Your practice is of course to send it to the attorney first?
A Yes.
Q And have the defendant or the witness sign it before it comes back and you counter-sign it?
A They mail it back to me and then I'll sign it.
Q All right. Let's talk a little bit about the Sam letter, Sam Richardson.
A Okay.
Q And I believe you stated you don't have an independent recollection about whether or not that was disclosed to the defense or not. Is that correct?
A I don't recall.
MR. BROWN: That wasn't asked, I object. I intentionally did not ask that question, so I don't know where that statement came from.
Q Is that correct?
THE COURT: I overrule the objection because if he didn't ask him on cross he can probably come back with his own witness.
MR. BROWN: I agree, but the question was, "You stated earlier that --"

that, I don't, without, you know, close comparison between this and the Ricky Davis statement and all that, I don't think there is anything inconsistent.
Q All right. If there had been something inconsistent, that might have triggered something?
A If something jumped out at me that was inconsistent, yes, I would have made a disclosure on that.
Q Let me ask you, you said it was work product. Is that something, if it were in your file and Norb or Marva came over and wanted to take a look at it, is that something that would have been there?
A I have an open file policy, if they come by, yes, they could have seen anything in there.
Q Okay.
Q So, you had advised them of that open file policy, correct?
A Yes. Norb Cummings worked for me the first two years I was Solicitor, so he was aware of it. He has in the past come in and looked at the file. I can't specifically recall whether he did that in this case or not but I remember him being in the office looking through my file on either this case or one of two other death penalty cases he was involved in when I was Solicitor.

Q And according to that document you entered, you provided a statement of Ricky Davis?
A Okay.
Q That does not include the Sam interview notes, does it?
A No.
Q Okay. But you thought it significant enough to issue that statement over, not just included in work product?
A Right.
Q Or excuse me, not just included in the open files policy, you actually affirmatively gave that to them?
A Yes.
Q And that was 36, Defense 36, that was the January letter with Ricky Davis' statement in it?
A Yes.
Q Then May 7th of 2002 you again provide them with Ricky Davis' same statement that he wrote. You twice provided that?
A Yes, apparently so.
Q And you also provided them a statement of Wayne Mood?
A Okay.
Q But you did not provide them with Sam's

notes?
A Apparently not.
Q Okay. And the Wayne Mood summary is your summary that you did of an interview with Wayne Mood and it is actually attached behind 37?
A Yes. Those are the typed notes of my interview with Wayne Mood.
Q And it looks very similar to the layout of the Sam interview, doesn't it?
A Probably the same secretary typed it out.
Q And that's an interview, the Wayne Mood interview is your interview of Wayne Mood?
A Ask me again, now?
Q The Wayne Mood interview that is contained in Defense 37 is your interview?
A Right, uh-huh (Affirmative).
Q The Sam memo which is Plaintiff's 67 is Sam Richardson's interview with Ricky Davis?
A Yes.
Q Okay. They looks similar, one was provided, Wayne Mood's was provided, affirmatively provided, the other one was not?
A Yes.
Q Okay. I will show you what has been marked as Plaintiff's Exhibit 88, and ask if you recognize

DORCHESTER COUNTY SHERIFF'S OFFICE

SHERIFF: RAY NASH
REGION COMMANDER CAPT. MAJOR

INVESTIGATIVE REPORT
REGION ONE

"CONFIDENTIAL"

01001493
MURDER
NURSERY ROAD
REEVESVILLE, SC

INVESTIGATING OFFICER DET. MICHAEL D. MILLER

TOPIC
MURDER INVESTIGATION _Dorchester County Sheriff's Office CASE # 01001493

DATE	INVESTIGATIVE ACTION

02/22/01 ON THE LISTED DATE THIS INVESTIGATOR WAS ASSIGNED TO ASSIST WITH CONDUCTING WITNESS INTERVIEWS.

I WAS PRESENT DURING AN INTERVIEW OF THE SUBJECT HIRAM JOHNSON. THE INTERVIEW WAS CONDUCTED BY SGT.A.COKER. HIRAM JOHNSON MADE STATEMENTS AS TO HIS ACTIVITIES ON 02/16/01 AND EARLY MORNING HOURS OF 02/17/01.JOHNSON MAY BE RE-INTERVIEWED AFTER FACT FINDING IN REFERENCE TO HIS COMPETENCY IS DETERMINED.

8950 PAGE ____ OF ____ CASE # [illegible]

DORCHESTER COUNTY SHERIFF'S OFFICE

STATEMENT

STATEMENT OF JAMES TAWAIN GADSON

HOME ADDRESS [redacted] Branchville HOME PHONE [redacted]

EMPLOYER ____ BUSINESS ADDRESS ____

BUS. PHONE ____ OCCUPATION ____

DATE OF BIRTH [redacted] SOCIAL SECURITY NUMBER [redacted]

THIS STATEMENT IS GIVEN 2-18-01 (DATE) AT 10:00 AM (TIME)

Branchville Police Department (LOCATION)

I DETECTIVE T. A. VAN DORAN AM WRITING THIS STATEMENT AT JAMES TAWAIN GADSON'S REQUEST AS HE STATES IT. JTG AROUND 1:30 FRIDAY AFTERNOON I WAS AT DOROTHY BOWMAN AND MARION BOWMAN'S HOUSE WE HAD JUST GOT BACK FROM GROVER (MEAT MARKET). I WAS GETTING A RIDE BACK TO THE VILLA'S WITH MARION'S SISTER UOLANDA BOWMAN. I WAS IN THE BACK SEAT OF UOLANDA'S VOLKSWAGON WHEN MARION CAME AROUND THE FRONT OF THE CAR WALKING STIFF LEGGED. UOLANDA ASKED MARION - WHY ARE YOU WALKING LIKE THAT? MARION SAID BECAUSE THE GUN WAS COLD. MARION PULLED THE GUN OUT FROM UNDER HIS SHIRT AND PUT IT IN ~~HIS SHIRT~~ JTG A BROWN PAPER BAG. WE GOT TO THE VILLA'S AND WE WENT UNDER A TREE TO TALK. MARION WAS GOING TO THE STORE AND HE SAID TO HANK - WATCH MY THING. HANK SAID WHAT THING? I SAID HE MUST BE TALKING ABOUT THAT OLD RAGGADY GUN HE GOT. WHILE MARION WAS GONE TO THE STORE SOMEONE MUST HAVE MOVED THE GUN FROM THE TRASH BARREL TO THE WOODS. MARION GOT UPSET WHEN HE RETURNED AND HIS GUN WAS NOT (CON

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS: T A VanDoran

RULE 5
DISCOVERY

WITNESS: Sgt A M [illegible]

SIGNATURE: James T Gadson

ORIGINAL

IN THE TRASH CAN. He ASKED US WHERE IS MY GUN AND WANTED TO FIGHT. Somebody ASKED him WHAT the GUN WAS IN? MARION SAID A brown paper bag. MARION found the bag AND GUN over NEAR THE woods. A woman NAMED Lille CAME Riding by IN A 86-87 Grey Buick AND MARION SAID I going down here to her AND IF she don't have my money I'M going to SLAP her with this GUN. He WENT down TO her AND CAME BACK AND SAID she will be BACK. MARION Left walking AND I did NOT SEE him UNTIL LATER THAT NIGHT. ABOUT 7:00 or 7:30 P.M ON Friday I SAW Candee MARTIN IN her CAR (Grey 97 OR SO Ford ESCORT) AND MARION WAS ON THE passenger side, we were AT THE villa's. He called me from under the tree - he said come here GAP. MARION SAID get IN I'M ABOUT to go AND pull this CAPER - I SAID that caper - MARION SAID I'M ABOUT to go Robb somebody. Candee said she needed some gas money. Marion told her to go to the NEW EZ SHOP AND we pulled up facing the tracks AND Candee pumped $10.00 worth of gas AND she jumped BACK IN the CAR AND MARION TOLD her to drive off without paying for the gas, after A 18 wheeler crossed the TRACKS. I TOLD them I did NOT WANT MY NAME INVOLVED IN ALL THAT AND I TOLD them to take me home. Candee took me to [redacted] AND I GOT OUT (CONT)

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

RULE 5
DISCOVERY

WITNESS: TA Van Doren

WITNESS: Sgt. [illegible]

SIGNATURE: James T. Sadsa

ORIGINAL

— STATEMENT CONTINUATION —

CASE # 01001493

The last words Candee said to me was let me hold your lighter and I did because I told her I had more in the house and I went in. A little after, 8:00 PM, I came back out, I walked down MAIN STREET and I RAN INTO MARION ON George STREET. He said he was coming from Doris's house. We walked the tracks to THE Villa's because I did not want the Police to see me because I was drunk up because I had been drinking all day. We got to the Villa's I was under the tree talking to Hank and Marion said something about a beer so he went and asked his sister Uolanda for her car. Marion got the car and Darian Williams came across the speed bump and asked me to buy them a beer so I went with them. We went to the new EZ shop - I got some beer, talked to my cousin Scotty Harrison and told him I was going back to the Villa's. I sat with Hank for a while, finished my beer, I got up and went to Mecka's House (Apt. [redacted]). I stayed there the rest of the night and did not see Marion anymore that night. On Saturday I was talking to Wendy Williams and Hank Koger and they said they saw Marion riding around in Candee's car about 2:30 AM Friday night - Saturday Morning. They said he came around the Villa's and that is all I know. Uloanda said, Saturday Morning, after about 10:00 AM that Marion had just went to Jail (cont)

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RULE 5
DISCOVERY

WITNESS: T A Van Horn

WITNESS: Sgt. [signature]

SIGNATURE: James J. Dodson

ORIGINAL

8953

She tried to tell me that he was shooting somewhere around Recsville, St. George, and Bowman. I told her I did not know because I did not see him. Then she say MARION write tell someone to come get the gun.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

RULE 5
DISCOVERY

WITNESS: TA Van Hoorn

WITNESS: Sgt. [illegible]

SIGNATURE: James J Dabo

ORIGINAL

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DORCHESTER COUNTY SHERIFF'S OFFICE

STATEMENT

STATEMENT OF JAMES TAWAIN GADSON (AKA: "GAP")

HOME ADDRESS [redacted], BRANCHVILLE, SC 29435 HOME PHONE (803) [redacted]

EMPLOYER NONE BUSINESS ADDRESS N/A

BUS. PHONE N//A OCCUPATION

DATE OF BIRTH [redacted] SOCIAL SECURITY NUMBER [redacted]

THIS STATEMENT IS GIVEN 02/18/2001 (DATE) AT (TIME)

BRANCHVILLE POLICE DEPARTMENT (LOCATION)

On Friday February 16, 2001 around 1:30 pm I was at Dorothy Bowman & Marion Bowman's house in Branchville. We had just got back from Grover, SC from the meat market. Yolanda Bowman, Marion and me were in Yolanda's blue Volks Wagon, 4 door car. We took Marion to his house for Marion to put his meat out. He came back out of his house and gave Yolanda $5.00 to take me and Marion back into the Project's (Branchville Villa Apartments). He was limping as he walked toward the car so Yolanda ask him why he was limping. He said his gun was cold. He had a silver & black colored .380 semi-automatic pistol tucked inside his pants on the right side. He had a Old English 32 oz. bottle of beer in a paper bag. He took the beer out of the bag and put the gun inside the bag. When we got out of the car at the Villa's we walked up under the tree. He sat the gun down in the trash can and told Hank Koger to watch it, then left and went to the store. About 15 minutes later he came back. Someone had moved the gun and put down near some bushes so Marion got mad and wanted to fight and accused me of taking the gun. He found the gun over near the bushes and put it down in his pants. A lady named "Lilly" or "Lil" came riding through the project in a Gray 86/87 Buick. He walked toward he talking slapping he with the gun if she didn't have his money she owed him for crack. Joe Fogle spoke up and told Marion not to mess with the woman. He talked to the woman and she said she would be back with his money. Lilly never came back. Marion walked to apartment [redacted] where my cousin Trina West lives. Marion was suppose to help her move some furniture into her apartment. It was about 7:00 - 7:30 pm before I saw him again. I was under the tree at the Villa when Marion and Kandee drove up in Kandee's car. Kandee was driving. Marion called me over to the car and told me to get in. He said he was going to pull a caper. I got in the car and Kandee said she would do anything for a little hit, meaning a hit of crack. She then said needed gas so Marion told her to go the new EZ Shop because it is the most crowed. We went to the gas station and Kandee parked facing the rail road track. She pumped $10.00 gas from the 87 octane pump. She jumped back in the car and Marion told her to go after an eighteen wheeler truck crossed the rail road track. Kandee took off without paying for the gas. We turned right on highway 78 going toward St. George and drove until we passed the Branchville High School then turned right on a paved road. We followed that road until it came to McAlhaney road and turned left. CONTINUED.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

RULE 5
DISCOVERY

WITNESS: Jan Coleman

WITNESS:

SIGNATURE: James T Gadson

ORIGINAL

As we drove down McAlhaney road, Marion was pointing out houses he wanted to rob. While we were riding, Marion put his arm around Kandee on the back of the seat and pointed his finger at the back of her head and made a gesture as if he was shooting a gun. We got to a stop sign and turned right. We followed that road and then turned left onto the road where we left Kandee. Marion told Kandee to pull over beside a yellow road sign and park. We got out and Marion gave Kandee a hit of crack. We were walking down the road while Kandee was still in the car smoking the crack. We were going to rob a house at the end of the road. Marion told me he was going to kill her because he said she was wired by the police a couple of weeks ago when she got drugs from him. Kandee got out of the car and ran up to us. She grabbed Marion by the arm and said she was scarred. Then a car came by so I jumped in the bushes. Marion and Kandee also jumped in the bushes. After the car passed I heard then get out of the bushes and run toward the car. I came out of the bushes and started walking toward the car. I hear three gun shots and three flashes as the went off. Kandee came running toward me with Marion running behind her. She stopped just before she got to me. About 15 or 20 feet away from me. She turned around to face Black (Marion) and said "No Black, No Black, don't shoot me again, I've got a child to take care of". Then Marion shot two more times and she fell to pavement. When he shot her I got scarred and messed and pissed in my pants. Black (Marion) then grabbed her legs and was pulling her to the woods. He said "Did you hear her head hit the road". I told him he should not have shot her. I ran and got in the car. I saw him put some kind of white paper down to mark the spot where Kandee's body was at. He also counted his steps. He got in the driver seat and said he shot her in the head. He said he was coming back to get her. He had the gun in his pants. We drove back to Branchville. He parked next to a field near the coal plant on highway 78 and we got out of it. Marion said he was coming back for the car later and drive it to Allen M[illegible]y Club in Bowman, SC. We walked down the rail road track, and went to the Branchville Villa Apartments. Black got ahead of me and met me to the Villa's. When I got there he was sitting in a blue Mazda 4 door talking to Travis Felder. It was Travis Felder's car. Black told Travis to meet him at the top of McAlhaney road after the club. Hank Koger, Darrin Williams, were at the Villa when I got there. I went into apartment [redacted] (Meeka's apartment) where I washed and changed my clothes. I put my soiled clothes in a plastic grocery bag and tied up the bag. "Twitty" (LNU) was there. We talked but I did not say anything about what had just happened. Chance Bennett came over later and spent the night. Saturday morning I got up and took my clothes home and washed them. Saturday after noon around 12:00 noon, I saw Travis Felder at apartment [redacted] of the Villa apartments. I called him over to where I was and ask him about black going to jail. He said yes. I ask him where Kandee's car was at. He said don't worry about it because it and Kandee had been burned up. He said he had followed Black to McAlhaney road and watched Black set the car and Kandee on fire, then brought Black back from where it was at. Travis left to go the barber shop. I did not see him anymore after that. I did not shoot Kandee or help Marion burn her or her car.

HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF Y KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY TATEMENT.

RULE 5
DISCOVERY

I[illegible]S: [signature]

TNESS: [signature] SIGNATURE: [signature]

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER — IN THE COURT OF GENERAL SESSIONS

THE STATE — REPORT OF FINDINGS

vs.

GADSON, JAMES TAWAIN
CH1000-1106
Defendant

TO: THE SOLICITOR/ASSISTANT SOLICITOR

THE UNDERSIGNED RESPECTFULLY REPORTS TO THE COURT:

1. That the above-named defendant was evaluated on **August 20, 2001** to determine the defendant's capacity to stand trial pursuant to Section 44-23-410, et sequential, Code of Laws of South Carolina, 1976. The evaluation was conducted under the supervision of **Dr. Richard L. Frierson.**

2. That after study and observation, the hospital staff submits the following report:

   a. That the above-named defendant is diagnosed with **Cannabis Dependence; History of Seizure Disorder.**

   b. That the above-named defendant is capable of understanding the nature of the charges, and is capable of assisting counsel in his own defense.

   c. That the above-named defendant **did** have the ability to differentiate right from wrong at the time of the alleged offense, on or about February 17, 2001.

   d. That the above-named defendant **did** have the capacity to conform his/her conduct to the requirements of the law.

3. It is recommended that the above-named defendant be returned to the jurisdiction of the court.

C, Gene Dukes, Attorney at Law, P.O. Box 622, St. George, SC 29477

Columbia, South Carolina
September 10, 2001

mab

Pamela M. Crawford, M.D.
Director
WSHPI-Forensic Division

EVALUATION SERVICE OF FORENSIC DIVISION

DATE OF EVALUATION: August 20, 2001

PRESIDING: Richard L. Frierson, M.D.

OTHERS PRESENT: Tora Brawley, Ph.D.

DIAGNOSES:
AXIS I: Cannabis Dependence.
AXIS II: No Diagnosis.
AXIS III: History of Seizure Disorder.

COMPETENCY TO STAND TRIAL: Yes.

CRIMINAL RESPONSIBILITY: Yes.

CAPACITY TO CONFORM: Yes.

DISPOSITION: Mr. Gadson has been returned to Dorchester County to await disposition of his charge.

PERTINENT STATEMENTS: James Tawain Gadson is a 22-year-old African American male who was seen at our hospital pursuant to a court order from the Dorchester County Court of General Sessions. This court order requests an evaluation of his competency to stand trial, his criminal responsibility pursuant to the McNaughten test for his actions on or about February 17, 2001, and if responsible, a determination of his capacity to conform his conduct to the requirements of the law. He is currently charged with Murder.

This evaluation consisted of the following:

1) Review of the court order requesting the evaluation.
2) Review of the arrest warrant related to the alleged offense.
3) Review of the investigative report.
4) Review of the defendant's prior criminal record.
5) Review of four statements given by Marion Bowman, Jr.
6) Review of statements given by the defendant.
7) Review of a statement given by Hiram Johnson.
8) Review of a statement given by Charles Fralix.
9) Review of a statement given by Edward Waters.
10) Review of a statement given by Troy Robinson.
11) Review of a statement given by Albert Judy.
12) Review of a statement given by Michael Hughes.

13) Review of a statement given by Ryan Reeves.
14) Review of a statement given by James Fender.
15) Review of a statement given by Dwayne Beane.
16) Review of a statement given by Perry Chinners.
17) Review of a statement given by Bryan Newhouse.
18) Review of a statement given by Terry Kelley.
19) Review of a statement given by Valorna Smith.
20) Review of a statement given by Vanietra Gadson.
21) Review of a statement given by Margaret Hawkins.
22) Review of a statement given by Tiara Coleman.
23) Review of a statement given by Katrina West.
24) Review of a statement given by Darian Williams.
25) Review of the autopsy related to the deceased.
26) Review of a social history obtained from this patient's family.
27) Psychological evaluation by Dr. Tora Brawley.
28) Neurological consultation.
29) An electroencephalogram (EEG).
30) A Magnetic Resonance Imaging (MRI scan) of the head.
31) A 1 hour and 20 minute clinical Forensic interview.

Mr. Gadson has no prior history of mental health or substance abuse treatment. He is currently on no medications in the jail. The jail reports that he is in the general population and has not displayed any behavioral challenges or concerns that would be indicative of or suggestive of mental illness. The patient's mother denies any known history of mental illness.

The patient allegedly began having seizures-like episodes around age 21, and has had three of them. During the first episode, he reports that he "just blacked out", and is unsure if he had any convulsions or other symptoms associated with this. He did not seek medical treatment at that time. The second episode occurred when he was smoking marijuana and he states that he fell down, and when he "came back", felt somewhat dizzy. He states that there were no convulsions or other symptoms associated with this episode, and he did not seek medical treatment. The last episode occurred approximately eight months ago. He states that he had not eaten all day. He reports that he had been using marijuana that day. He states that his cousin was present and observed him "shake and pass out". He reveals that there was also incontinence during this episode. He did go to the hospital following this event, and was told that he probably had a "light seizure". He also described a post-ictal state which would be consistent with seizure activity. The etiology of these seizures-like episodes remains unclear. He was prescribed Dilantin for them in the past. He is not currently taking medication, and has not received any since his incarceration. He left school in the 9th grade. There is no family history of mental illness. He has no history of symptoms consistent with conduct disorder. Despite the history of seizures, MRI scan, EEG, and neurological evaluations were normal and did not demonstrate evidence of central nervous system pathology.

Mr. Gadson reports that he smokes large quantities of cannabis. He reported that he had consumed up to six olunts of cannabis on a daily basis. He has had occupational difficulties due to positive urine drug screens at work. He has made unsuccessful attempts to quit using cannabis and it is our opinion that he meets criteria for diagnosis of Cannabis Dependence.

MENTAL STATUS EXAM: Mr. Gadson was alert and oriented to person, place, day, date, and time. He was neatly groomed and cooperative with the interview. He made good eye contact. He was able to register three objects and he recalled two of them after five minutes. He recalled the third object with a prompt. He was able to recall significant past personal information. We found no evidence of long or short-term memory impairment. He demonstrated the capacity for abstract reasoning as evidenced by his interpretation of a proverb and a similarity. His fund of knowledge was in the average range and his intelligence was also judged to be in the average range. His judgment to a hypothetical situation was fair. His ability to concentrate was good. He gave an approximate answer to a calculation question. He described his mood as "not right since this happened." He denied suicidal or homicidal ideas. He denied a sleep or appetite disturbance. He denied delusions. Specifically, there was no evidence of paranoia, grandiosity, or ideas of reference. He does report that he hears a voice and "a little beeping noise." His description of this hallucination is atypical for mental illness. His thinking was logical and goal directed without loosening of associations or flight of ideas and there was no evidence of grossly disturbed thought processes or thought content. He did not display subtle negative symptoms of psychotic mental illness

PSYCHOLOGICAL EVALUATION: Mr. Gadson was administered psychological and cognitive tests. During the evaluation, he was alert, fully oriented and cooperative. On the Repeatable Battery for the Assessment of Neuropsychological Status, he exhibited some mild impairment of verbal memory, but verbal learning was good. Other areas of cognition that were assessed were adequate. On the SIRS, there was no evidence of malingering of psychotic symptoms. Overall, Mr. Gadson did not evidence significant levels of cognitive dysfunction on this evaluation.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Gadson was able to read his Miranda Warnings and restate them in his own words. He understood their meaning. He elected to call his attorney prior to participating in the evaluation. He was aware of the charge against him and he appreciates its seriousness, including the maximum potential sentence he could receive if convicted. He understands the role of his attorney in assisting him with a defense. He states that he could tell his attorney everything he knows about the allegations against him. He states that he has met his attorney on three occasions. He required some education regarding the role of the solicitor. He states that the judge "sits there and listens and then gives you time." He understands the role of a jury. He is aware of the pleas available to him. He states that a plea bargain is when "they offer you a certain amount of time to get you to plead guilty." He was able to state a desired outcome in his case. He was able to solve a hypothetical problem involving the courtroom and he appreciates the importance of appropriate courtroom behavior. He was able to discuss potential evidence in his case, including statements given by his codefendant as well as others. He was able to discuss evidence in a hypothetical manner. He was able to discuss potential plea offers he would be willing to accept in this case.

It is our opinion that he has both a factual understanding of the legal system and sufficient present ability to rationally consult with his attorney regarding a defense. Therefore, it is our opinion that he is currently competent to stand trial.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Gadson's recollection of the alleged offense is self-protective. He does not report symptoms of a mental illness as it relates to the charge in any way. It is our opinion that he would have been able to distinguish legal or moral right from legal or moral wrong on or about February 17, 2001. Therefore, it is our opinion that he would have been criminally responsible pursuant to the McNaughten standard.

CONCLUSION REGARDING CAPACITY TO CONFORM: Likewise, we find no evidence of an irresistible impulse or other mental symptom which would have substantially impaired his ability to conform his conduct to the requirements of the law.

RECOMMENDATIONS: Mr. Gadson would benefit from substance abuse counseling and attendance of Narcotics Anonymous, given the significance of his cannabis dependence. He does not need acute psychiatric hospitalization at the present time.

Richard L. Frierson, M.D.
Director, Forensic Psychiatry Education

Tora Brawley, Ph.D.
Licensed Clinical Psychologist

RLF/khr

D: 08/20/01;08/21/01
RT/EM: 08/22/01
F/EM: 09/10/01 (rlb,tb)

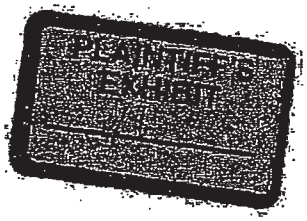
Augest-6

I Rickie Davis was on A side with Gadson
nd he said that he was the one that Shot
e Girl and gave Bowman back the gun
hat was used and He said that it didn't
ster because Blak family had got caught
ith the gun He also that the police
ll he got to do is say Blak did it

Rick Davis

Sworn to before this
____ day of ____ 2001

Notary Commission Expires ____



PAGE 1 OF 1 CASE #010014

DORCHESTER COUNTY SHERIFF'S OFFICE

STATEMENT

STATEMENT OF Hiram Johnson

HOME ADDRESS [redacted] Branchville, SC 29432 HOME PHONE [redacted]

EMPLOYER Simpson's BUSINESS ADDRESS Branchville

BUS. PHONE 274-8212 OCCUPATION Car Wash-/Tires

DATE OF BIRTH [redacted] SOCIAL SECURITY NUMBER [redacted]

THIS STATEMENT IS GIVEN 4-05-01 (DATE) AT 1715 pm (TIME)

Simpson's Used Tire Store, Branchville (LOCATION)

ON THE night of FEBRUARY 16, 2001 I SAW MARION BOWMAN JR. RIDING IN KANDEE MARTINS CAR. IT WAS A GRAY FORD ESCORT. I GOT MY HAIR FIXED EARLY THAT NIGHT. LATER "JR" AND ME WENT TO THE EZ-SHOP IN YOLONDO'S BLUE CAR. WE SAW JAMES GADSON SR. "Bubble Gum", AND "JR" GOT HIM TO GO IN THE STORE AND GET SOME GLOVES. THEN WE WENT BACK TO THE VILLA'S. LATER-AROUND 12:00 - 12:30am MARION, TAWAIN GADSON(GAP), DARRIAN WILLIAMS("POP") AND ME GOT IN KANDEE'S CAR AND WENT TO Allen Murray's Club. WE All WORE BROWN GLOVES. BECAUSE "JR" SAID HE HAD STOLE THE CAR. "JR" TALKED TO TRAVIS Felder AT THE Club AND SAID TRAVIS WAS GOING TO MEET HIM LATER IN BRANCHville. While WE WERE RIDING IN KANDEE'S CAR, "JR" HAD A BLACK PISTOL IN HIS LAP. ON THE WAY TO THE Club "JR" STOPPED THE CAR ON Hwy 210. "JR" TOOK THE BABY SEAT OUT of THE BACK SEAT AND PUT it IN THE TRUNK. When WE LEFT The Club MARION DROVE US BACK TO BRANCHville. WE DROPPED "POP" off AT THE VILLA APARTMENTS. THEN HE TOOK ME HOME. IT WAS AROUND 2:15 - 2:30AM. MARION AND TAWAIN LEFT my HOUSE IN KANDEE'S CAR. TRAVIS HAD STOPPED AT THE VILLAS To put CAROLYN BROWN OUT. THAT WAS THE LAST TIME I SAW HIM.

THIS STATEMENT WRITTEN By Sgt. A. Coker AT My REQUEST.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS: [signature]

PLAINTIFF'S EXHIBIT 33

RULE 5 DISCOVERY

WITNESS: Sgt. A.M. Coker SIGNATURE: Hiram Johnson

9056 PAGE 1 OF 1 CASE # 0100 1493

DORCHESTER COUNTY SHERIFF'S OFFICE

STATEMENT

STATEMENT OF WILLIAMS, DARIAN ANTNIO

HOME ADDRESS [redacted] BRANCHVILLE, SC 29432 HOME PHONE [redacted]

EMPLOYER NONE BUSINESS ADDRESS N/A

BUS. PHONE N//A OCCUPATION

DATE OF BIRTH [redacted] SOCIAL SECURITY NUMBER [redacted]

THIS STATEMENT IS GIVEN 02/22/01 (DATE) AT 15:30 (TIME)

BRANCHVILLE POLICE DEPARTMENT (LOCATION)

On Friday night 2/16/01 I went to the Branchville Villa Apartments around 4:00 pm. Around 8:00 pm I saw "GAP" (Tawain Gadson) walk up. He was wearing a Burgundy Hawaiian style shirt with Hawaiian trees on it, blue jeans and a white sweater cap. He walked up to me and Hank Koger. Gap said he was coming from his house and that he had just finished eating. He acted natural. I did not notice his clothes being dirty or soiled and I did not smell anything out of the ordinary about him. Tawain went on to apartment [ ] where Meeka live A few minutes later Marion Bowman Jr. ("JR" or "BLACK") walked up. He was wearing black jeans and a gray pull over tee shirt. I did n talk to him. He went over to his sister Yolanda Bowman and ask her if he could use her car to go get some beer. He left in Yolanda's blue car and came back about 5 minutes later with some beer. All of us then went to apartment [ ] where we drank some beer and talked. Mario said he was going to get a car so he could go to Allen Murray's Club. He was gone about 15 minutes and came back. I left walk home, and as I was passing the Highway Department shed, I saw Kandee's car parked there. Marion called out to me and ask if I still wanted to go to the club. I said yes and turned around and started walking back toward him. Marion and Hiram Johnson were standing in front of apartmen [ ]. Tawain came out of apartment [ ] and started walking toward us. Marion gave me a pair of brown gloves and told me to put them on. I ask why but he never answered me. Marion gave Tawain and Hiram gloves and we all put gloves on. Marion told me that if I mentioned to anyone that he had Kandee's car, that he would blow my brains out. We got in the car and Marion drove us to the club. We got to Allen Murray's around 12:00 midnight. I saw Travis Felder at the club. He had drove his own car, a blue 4 door Mazda 323 to the club. We stayed there until around 2:00 am. We all four came back to Branchville in Kandee's car. We did not stop anywhere between the club and home. We got back to town around 2:30 am. Marion dropped me and Tawain off in front of the apartments. Tawain went inside apartment [ ] I walked to my house. My mother had to get out of bed to let me inside. Travis had not made it back to Branchville at that time. I last saw Marion and Hiram sitting in Kandee's car, parked in front of the Highway Department at about 2:35 am. I don't know where they went or what they did after that. No one told me what had happened that night and I had no knowledge of what had happened. I did not take part in killing anybody or burning the car. I did not know they were going to burn the car. This is all I know.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST O MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF M STATEMENT.

PLAINTIFF'S EXHIBIT 337

RULE 5 DISCOVERY

NESS: _____

WITNESS: Sgt. A.M. Coker SIGNATURE: Darian A. Williams

ARREST WARRANT

427828

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of
ORANGEBURG COUNTY

THE STATE 2000017992
against

HIRAM EUGENE JOHNSON JR
Address:
BRANCHVILLE, SC 29432
Phone: 274838 SSN:
Sex: M Race: B Height: 6 1 Weight: 180
DL State: DL #:
DOB: Agency ORI #:
Prosecuting Agency: SHERIFF'S DEPARTMENT
Prosecuting Officer: DET. KENNY KINSEY
Offense: RECEIVING STOLEN GOODS/L
ESS THAN $1000 Offense Code: 133
Code/Ordinance Sec. 16-13-180

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of
The accused is to be arrested and brought before me to be dealt with according to law.

(L.S.)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant HIRAM EUGENE JOHNSON on 5 29 01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
ORANGEBURG MAGISTRATES 1 DAVIS
P.O. BOX 9000
ORANGEBURG SC 29116

Filed 6-22-01

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipa)
ORANGEBURG COUNTY)

AFFIDAVIT

Attorney General 1990 8

9074

Personally appeared before me the affiant DET. KENNY KINSEY who being duly sworn deposes and says that defendant HIRAM EUGENE JOHNSON did within this county and state on 11/02/00 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of ORANGEBURG COUNTY) in the following particulars:

DESCRIPTION OF OFFENSE: RECEIVING STOLEN GOODS/LESS THAN $1000.
RECEIVING STOLEN GOODS/LESS THAN $1000.

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

BASED ON AN INVESTIGATION BY OCSO, THAT ON OR ABOUT 11-2-00, ONE HIRAM EUGENE JOHNSON, JR., DID VIOLATE SECTION 16-13-180 OF SC CODE OF LAWS, IN THAT HE DID HAVE IN HIS POSSESSION 1 SPRINGFIELD 22 RIFLE W/TASCO SCOPE, BELONGING TO ROBERT BROWN, WHICH WAS REPORTED STOLEN FROM HIS RESIDENCE ON 8-12-2000. ALL OF WHICH OCCURRED IN ORANGEBURG COUNTY, STATE OF SOUTH CAROLINA.

01 JUN 12 PM 5:57

Sworn to and subscribed before me on 11/13/00
Peggy D. Davis (L.S.)
Signature of Issuing Judge

Kenny Kinsey
Signature of Affiant
Affiant's Address P. O. BOX 6000
ORANGEBURG, SC 29116
Affiant's Telephone 803 531-4647

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
ORANGEBURG COUNTY)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 11/02/00 defendant HIRAM EUGENE JOHNSON did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of ORANGEBURG COUNTY) as set forth below:

DESCRIPTION OF OFFENSE: RECEIVING STOLEN GOODS/LESS THAN $1000.
RECEIVING STOLEN GOODS/LESS THAN $1000.

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Peggy D. Davis (L.S.)
Signature of Issuing Judge
Judge Code: 721

Judge's Address P.O. BOX 9000
ORANGEBURG SC 29116
Judge's Telephone
Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

ARREST WARRANT

E-599078

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Orangeburg

THE STATE

against

Hiram Eugene Johnson, Jr.

Address: [redacted] Tk [redacted]

Branhville, SC 29432

Phone: 274 8381 SSN: [redacted]

Sex: M Race B Height: 6'1" Weight: 170

DL State: DL #: 7

DOB: [redacted] Agency ORI #: 380000

Prosecuting Agency: OCSD

Prosecuting Officer: Kenny Kinsey

Offense: BURGLARY SECOND DEGREE

Offense Code: 080

Code/Ordinance Sec. 16-11-312

This warrant is CERTIFIED FOR SERVICE in the [X] County/ [ ] Municipality of Orangeburg. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Hiram Eugene Johnson, Jr. on 5 29 01

L + Dor Hamett

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Orangeburg)

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant Kenny Kinsey who being duly sworn deposes and says that defendant Hiram Eugene Johnson, Jr. did within this county and state on 09/26/00 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) in the following particulars:

DESCRIPTION OF OFFENSE: Burglary - SECOND DEGREE

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

Based on an investigation by the OCSD, that on Sept. 26, 2000 locate at [redacted] Cope, South Carolina one Hiram Eugene Johnson Jr. alond with Co-defendants commit the crime of Burglary Second Deg in that the defendant did participate in the unlawful forced entry to the residence of Jewel Proctor with the intent to steal personal property of residence owner. This incident took place in Orangeburg County, State of South Carolina.

Sworn to and subscribed before me on 11-6-00)

Richard Munn (L.S.))

Signature of Issuing Judge

Kenny Kinsey

Signature of Affiant

Affiant's Address 1520 Ellis Ave Orangeburg SC 29115

Affiant's Telephone 803-533-5815

01 JUN 12 PM 1:57

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Orangebnurg)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/26/00 defendant Hiram Eugene Johnson, Jr. did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY _ SECOND DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Richard Munn (L.S.))

Signature of Issuing Judge)

Judge Code: 796

Judge's Address P.O. Box 85 Branchville S.C. 29432

Judge's Telephone 803-274-8820

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORI L

9132

RICKY DAVIS INTERVIEW

CONDUCTED BY SAM AT LIEBER CORRECTIONAL INSTITUTION.

RICKY DAVIS STATES THAT HE AND JAMES TAIWAN GADSON ALONG WITH 4 OR 5 OTHERS WERE SITING AT A TABLE ON THE A-SIDE. GADSON WAS TALKING TO THE GROUP WHEN HE SAID SOMETHING ABOUT KILLING A GIRL. HE STATED THAT THEY WERE GOING TO ROB SOMEONE. THEY THOUGHT SHE WAS WIRED AND HE SHOT HER IN THE HEAD WITH A .380.

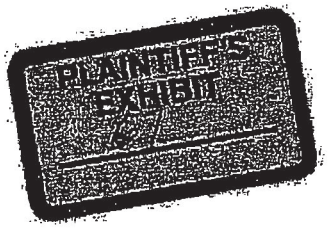
THIS CONVERSATION OCCURRED ABOUT 3 WEEKS BEFORE HE WROTE THE LETTER. (AUGUST 6, 2001).

AFTERWARDS, DAVIS WAS PLAYING CHESS WITH MARION BOWMAN IN CELL 8. DAVIS TOLD MARION BOWMAN ABOUT THE CONVERSATION HE HAD WITH JAMES GADSON. BOWMAN SAID "IF YOU HEARD ALL THIS, WRITE IT DOWN." BOWMAN SHOWED HIM A PICTURE OF THE DEAD GIRL. HE ALSO SHOWED HIM A FILE FROM HIS ATTORNEY.

BOWMAN SAID HE HAD BEEN SMOKING DOPE THAT DAY. HE SAID IT WAS HIM, JAMES GADSON AND THE GIRL AT THE SCENE. THE GIRL WAS SUPPOSE TO HELP THEM ROB A HOUSE TO GET DRUGS AND MONEY. BOWMAN KNEW THE INTENDED VICTIM.

BOWMAN NEVER ADMITTED HE SHOT ANYONE.

SUBSEQUENT TO THIS, DAVIS TALKED TO JAMES GADSON AGAIN. AT THIS TIME, GADSON SAID THAT BOWMAN SHOT HER.



9129

WITNESSES

KENNY KINSEY

Arresting Agency:

Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

E599078

Arrested: May 29, 2001

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: April 17, 2003

APR 17 2003

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2003GS38-0878

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

April 14, 2003 TERM

THE STATE

vs.

Hiram Eugene Johnson, Jr.

Indictment for

BURGLARY - 2ND DEGREE
(DWELLING)

SC Code: 16-11-312(A)
CDR Code: 0080
Class: FEL-D

ATTEST: TRUE COPY
Lisa [illegible]
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

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

Defendant

I

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

Defendant

Witness:

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

PLAINTIFF'S EXHIBIT 71

[illegible]

9130

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2003GS38-0878

At a Court of General Sessions, convened on April 14, 2003 the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY - 2ND DEGREE (DWELLING)

That Hiram Eugene Johnson, Jr., did in Orangeburg County, on or about September 26, 2000, willfully and unlawfully enter a dwelling belonging to Jewel Proctor, without consent and with intent to commit a crime therein. This offense being a violation of Section §16-11-312(a) of the South Carolina Code of laws, (1976 as amended).

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

Robert D. Robbins SOLICITOR

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE - 06/21/2001

INDICTMENT NUMBER: 2003GS38-878

DEFENDANT NAME: JOHNSON, HIRAM EUGENE JR AKA:

ADDRESS: [redacted] CITY:BRANCHVILLE STATE:SC ZIP 29432

SOCIAL SECURITY NUMBER [redacted] SEX:1 MALE RACE:2 BLACK

DATE OF BIRTH: [redacted] DRIVERS LICENSE STATE / NO.:SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER:E599078 COUNTS:01 OFFENSE CODE:0000

NO WARRANT? 0 NAME OF OFFENSE:BURGLARY/(NON-V

DATE OF ARREST:11/02/2000 DATE RECD BY CLERK:06/21/2001

SUMMARY JUDGE:

DISP DATE:12/29/04 DISP TYPE: Nolle Prosse

DISP TYPE EXPLANATION:

No credible evidence

JUDGE CODE/NAME: COURT REPORTER:

CONVICTION: CTS:00 OFFENSE:0000

SENTENCE:

DEFENSE ATTORNEY: PROSECUTING ATTORNEY: Robert Madden

ARREST WARRANT

E-599078

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Orangeburg

THE STATE

against

Hiram Eugene Johnson, Jr.

Address: [redacted] Tk [redacted]

Branhville, SC 29432

Phone: 274 8381 SSN: [redacted]

Sex: M Race B Height: 6'1" Weight: 170

DL State: DL #: 7

DOB: [redacted] Agency ORI #: 380000

Prosecuting Agency: OCSD

Prosecuting Officer: Kenny Kinsey

Offense: BURGLARY SECOND DEGREE

Offense Code: 080

Code/Ordinance Sec. 16-11-312

This warrant is CERTIFIED FOR SERVICE in the [X] County/ [ ] Municipality of Orangeburg. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Hiram Eugene Johnson, Jr. on 5.29.01

L. Dor Harriett

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Orangeburg)

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant Kenny Kinsey who being duly sworn deposes and says that defendant Hiram Eugene Johnson, Jr. did within this county and state on 09/26/00 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) in the following particulars:

DESCRIPTION OF OFFENSE: Burglary - SECOND DEGREE

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

Based on an investigation by the OCSD, that on Sept. 26, 2000 locate at [redacted] Cope, South Carolina one Hiram Eugene Johnson Jr. alond with Co-defendants commit the crime of Burglary Second Deg in that the defendant did participate in the unlawful forced entry to the residence of Jewel Proctor with the intent to steal personal property of residence owner. This incident took place in Orangeburg County, State of South Carolina.

Sworn to and subscribed before me on 11-6-00)

Richard Munn (L.S.))

Signature of Issuing Judge

Kenny Kinsey

Signature of Affiant

Affiant's Address 1520 Ellis Ave Orangeburg SC 29115

Affiant's Telephone 803-533-5815

01 JUN 12 PM 1:57

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Orangebnurg)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/26/00 defendant Hiram Eugene Johnson, Jr. did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY _ SECOND DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Richard Munn (L.S.))

Signature of Issuing Judge)

Judge Code: 796

Judge's Address P.O. Box 85 Branchville S.C. 29432

Judge's Telephone 803-274-8820

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORI L

9132

9133

WITNESSES

F.EMORY RUSH

Arresting Agency:

Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

E599076

Arrested: May 29, 2001

ACTION OF GRAND JURY

TRUE BILL

APR 17 2003

Foreperson of Grand Jury
Date: April 17, 2003

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2003GS38-0876

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

April 14, 2003 TERM

THE STATE
vs.

Hiram Eugene Johnson, Jr.

Indictment for

GRAND LARCENY >$5000

SC Code: 16-13-30
CDR Code: 0479
Class: FEL-E

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

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

Defendant

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

Defendant

Witness:

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

03 APR 21 AM 8:55

9134

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2003GS38-0876

At a Court of General Sessions, convened on April 14, 2003 the Grand Jurors of Orangeburg County present upon their oath:

GRAND LARCENY >$5000

That Hiram Eugene Johnson, Jr., did in Orangeburg County, on or about September 26, 2000, feloniously take and carry away, with the intent to permanently deprive the owner of such property, the personal goods of Jewel Proctor, valued at more than five thousand dollars, ($5000.00) and as a result violated Section 16-13-30, Code of Laws of South Carolina, 1976, as amended.

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

Robert D. Robbins SOLICITOR

(52)

(1)

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE - 06/21/2001

INDICTMENT NUMBER: 2003GS38- 876

DEFENDANT NAME: JOHNSON, HIRAM EUGENE JR AKA:

ADDRESS: [redacted] CITY:BRANCHVILLE STATE:SC ZIP 29432

SOCIAL SECURITY NUMBER [redacted] SEX:1 MALE RACE:E BLACK

DATE OF BIRTH: [redacted] DRIVERS LICENSE STATE / NO.:SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER:E599076 COUNTS:01 OFFENSE CODE:0479

NO WARRANT? 0 NAME OF OFFENSE:LARCENY/GRAND.

DATE OF ARREST:11/02/2000 DATE RECD BY CLERK:06/21/2001

SUMMARY JUDGE:

DISP DATE:12/29/04 DISP TYPE: Nolle Prosse

DISP TYPE EXPLANATION:

No credible evidence

JUDGE CODE/NAME: COURT REPORTER:

CONVICTION: CTS:00 OFFENSE:0000

SENTENCE:

DEFENSE ATTORNEY: PROSECUTING ATTORNEY: Robert ...

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE - 06/21/2001

INDICTMENT NUMBER: 2003GS38-878

DEFENDANT NAME: JOHNSON, HIRAM EUGENE JR AKA:

ADDRESS: [redacted] CITY:BRANCHVILLE STATE:SC ZIP 29432

SOCIAL SECURITY NUMBER [redacted] SEX:1 MALE RACE:2 BLACK

DATE OF BIRTH: [redacted] DRIVERS LICENSE STATE / NO.:SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER:E599078 COUNTS:01 OFFENSE CODE:0000

NO WARRANT? 0 NAME OF OFFENSE:BURGLARY/(NON-V

DATE OF ARREST:11/02/2000 DATE RECD BY CLERK:06/21/2001

SUMMARY JUDGE:

DISP DATE:12/29/04 DISP TYPE: Nolle Prosse

DISP TYPE EXPLANATION:

No credible evidence

JUDGE CODE/NAME: COURT REPORTER:

CONVICTION: CTS:00 OFFENSE:0000

SENTENCE:

DEFENSE ATTORNEY: PROSECUTING ATTORNEY: Robert Madden

(52)

(1)

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE - 06/21/2001

INDICTMENT NUMBER: 2003GS38- 876

DEFENDANT NAME: JOHNSON, HIRAM EUGENE JR AKA:

ADDRESS: [redacted] CITY:BRANCHVILLE STATE:SC ZIP 29432

SOCIAL SECURITY NUMBER [redacted] SEX:1 MALE RACE:E BLACK

DATE OF BIRTH: [redacted] DRIVERS LICENSE STATE / NO.:SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER:E599076 COUNTS:01 OFFENSE CODE:0479

NO WARRANT? 0 NAME OF OFFENSE:LARCENY/GRAND.

DATE OF ARREST:11/02/2000 DATE RECD BY CLERK:06/21/2001

SUMMARY JUDGE:

DISP DATE:12/29/04 DISP TYPE: Nolle Prosse

DISP TYPE EXPLANATION:

No credible evidence

JUDGE CODE/NAME: COURT REPORTER:

CONVICTION: CTS:00 OFFENSE:0000

SENTENCE:

DEFENSE ATTORNEY: PROSECUTING ATTORNEY: Robert ...

9228

FROM: SCCH

ICHS/QH INQUIRY OF SCLED CCH FILES USING:
ATN-COKER, A
ORI-SC0180001 PUR-C
NM-JOHNSON, HIRAM EUGENE
DOC- [redacted] SEX-M RAC-B DOB- [redacted]

DATE-02/26/2001 TIME-13:31 PAGE-01 OF 01
ORI-SC0180001
SCLED IDENT RESPONSE TO ICHS/QH INQUIRY
THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-JOHNSON, HIRAM E JR SEX-M RACE-B
HEIGHT-508 WEIGHT-160 EYES-BRO HAIR-BLK SKIN- BORN-XX
FPC: HENRY- 7 S 9 U 000 NCIC-071313COCO111216CI08
S 6 U 00I 8
SID-SC01152287 FBI-740157FB0
PLACE OF BIRTH UNKNOWN
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--
12/23/1997 DATE OF LAST UPDATE--02/09/1998

ALIAS NAMES-JOHNSON, HIRAM

BIRTH DATES- [redacted]

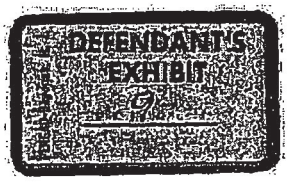
SOC SEC NUMBERS- [redacted]
SCLED CJICS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS. THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES



FOR COMPLETE CRIMINAL HISTORY, PERFORM I
CHR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NCIC
ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
** END OF MESSAGE **

IN FEB 26, 2001 13:31:10 000271530562/3952

TO: DORS002
FROM: NCIC2

7L010MQQ0LBYQ6HP020
SC0180001
THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR INQUIRY ON NAM/JOHNSON,HIRAM EUGENE SEX/M RAC/B DOB/[redacted]
SOC/[redacted] PUR/C

NAME	FBI NO.	INQUIRY DATE
JOHNSON,HIRAM E JR	740157FB0	2001/02/26

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE	PHOTO
M	B	[redacted]	508	160	BRO	BLK	UNKNOWN	N

FINGERPRINT CLASS	PATTERN CLASS
07 13 13 CO CO	RS RS RS WU RS LS LS LS WU LS
11 12 16 CI 08	WU LS WU

ALIAS NAMES
JOHNSON,HIRAM

SOCIAL SECURITY

[redacted]

IDENTIFICATION DATA UPDATED 1998/02/09

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE FOLLOWING:
SOUTH CAROLINA - STATE ID/SC01152287

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

IN FEB 26, 2001 13:31:13 0002715336Ø2/3952
FEB 26, 2001 13:31:14 MSG# 3110 SAN: 0MQQ0LBYQ6HP

9228

FROM: SCCH

ICHS/QH INQUIRY OF SCLED CCH FILES USING:
ATN-COKER, A
ORI-SC0180001 PUR-C
NM-JOHNSON, HIRAM EUGENE
DOC- [redacted] SEX-M RAC-B DOB- [redacted]

DATE-02/26/2001 TIME-13:31 PAGE-01 OF 01
ORI-SC0180001
SCLED IDENT RESPONSE TO ICHS/QH INQUIRY
THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-JOHNSON, HIRAM E JR SEX-M RACE-B
HEIGHT-508 WEIGHT-160 EYES-BRO HAIR-BLK SKIN- BORN-XX
FPC: HENRY- 7 S 9 U 000 NCIC-071313COCO111216CI08
S 6 U 00I 8
SID-SC01152287 FBI-740157FB0
PLACE OF BIRTH UNKNOWN
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--
12/23/1997 DATE OF LAST UPDATE--02/09/1998

ALIAS NAMES-JOHNSON, HIRAM

BIRTH DATES- [redacted]

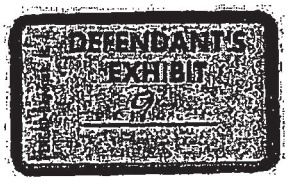
SOC SEC NUMBERS- [redacted]
SCLED CJICS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS. THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES



FOR COMPLETE CRIMINAL HISTORY, PERFORM I
CHR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NCIC
ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
** END OF MESSAGE **

IN FEB 26, 2001 13:31:10 000271530562/3952

TO: DORS002
FROM: NCIC2

7L010MQQ0LBYQ6HP020
SC0180001
THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR INQUIRY ON NAM/JOHNSON,HIRAM EUGENE SEX/M RAC/B DOB/[redacted]
SOC/[redacted] PUR/C

NAME	FBI NO.	INQUIRY DATE
JOHNSON,HIRAM E JR	740157FB0	2001/02/26

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE	PHOTO
M	B	[redacted]	508	160	BRO	BLK	UNKNOWN	N

FINGERPRINT CLASS	PATTERN CLASS
07 13 13 CO CO	RS RS RS WU RS LS LS LS WU LS
11 12 16 CI 08	WU LS WU

ALIAS NAMES
JOHNSON,HIRAM

SOCIAL SECURITY

[redacted]

IDENTIFICATION DATA UPDATED 1998/02/09

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE FOLLOWING:
SOUTH CAROLINA - STATE ID/SC01152287

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

IN FEB 26, 2001 13:31:13 0002715336Ø2/3952
FEB 26, 2001 13:31:14 MSG# 3110 SAN: 0MQQ0LBYQ6HP

9230

DORS002
FROM: SCCH

ICHR REQUEST FOR RAP SHEET
ORI-SC0180001 FBI-740157FB0 PUR-C
ATN-COKER, A

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-02/26/2001 TIME-13:32:11
REQ ORI-SC0180001 ' DORCHESTER CO SO
SID-SC01152287 FBI-740157FB0
NAME-JOHNSON, HIRAM E JR SEX-M RACE-B
HEIGHT-508 WEIGHT-160 EYES-BRO HAIR-BLK SKIN- BORN-XX
FPC-071313COCO111216CI08 HENRY- 7 S 9 U 000
S 6 U 001 8
PLACE OF BIRTH UNKNOWN
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--12/23/1997 DATE OF LAST UPDATE--02/09/1998

ADDITIONAL IDENTIFIERS NAME	BIRTH DATES	MARKS	SOC SEC	MISC NUM
JOHNSON, HIRAM				

CONTRIBUTOR/SUBJECT	DOA/RCVD	CHARGE/DISPOSITION/ETC
SC040055C R & E CENTER COLA	12/19/1997	CUSTODY STATUS-RECEIVED
CASE-246183		START DATE-12/19/1997
CIT-16-23-30 FELONY		COURT CHARGE 01-UNLAWFUL POSSESSION PISTOL YOA SEC 5C
		COURT DISP-CONVICTED;1-6YRS

BASED ON SEARCH OF SCLED CJICS CCH FILE USING FBI/740157FB0
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJICS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO S L E D W A N T E D P E R S O N S

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS. THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

* S C CJICS END OF RECORD **

IN FEB 26, 2001 13:32:16 000271730620/3952
OUT FEB 26, 2001 13:32:18 MSG# 3111 SAN: 0PQQ0LBYQ7KF

TO: DORS002
FROM: SCCH

C ORS00
) WANTED RECORD ON SLED/CJICS COMPUTER *
FBI - 740157FB0
SOC -

* INQUIRY SENT TO NCIC WANTED*

IN FEB 26, 2001 13:32:16 000271732402/3952
OUT FEB 26, 2001 13:32:19 MSG# 3112 SAN: 0PQQ0LBYQ7KF

TO: DORS002
FROM: NCIC1

10PQQ0LBYQ7KF1C8
SC0180001

NO NCIC WANT FBI/740157FB0
) NCIC WANT SOC/

DORCHESTER COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

REPORTING OFFICER: Sgt. Alvin M. Coker **CASE NUMBER:** 01001493

Following the polygraph, James Gadson provided Maj. Stephenson with additional information concerning this case. He agreed to provide another statement to R/O and Orangeburg County Detective Jack Coleman with the additional information. Gadson stated that Terry Kelly did not have anything to do with this incident, and in fact was not there at the time of the incident.

R/O informed James Tawain Gadson again of his Miranda Rights by reading the rights from a Pocket card. James indicated that he understood his rights and agreed to provide another statement. R/O produced that statement on a computerized form as it was told by James Tawain Gadson. Once it was completed, R/O printed it out and had Gadson read the statement to assure that it was true and accurate as he had told it. R/O inquired of Gadson as to weather anything needed to be added or deleted from the statement as it was written. He indicated that it was correct and then signed the statement to which he was provided a copy. Detective Jack Coleman witnessed the statement, as did this R/O.

In his second statement, James Tawain Gadson indicated that he and Marion had gone to Grover near St. George with Yolanda to purchase some meat. When they returned to Marion's house, Marion took his package inside and returned to the car with a silver and black 380 semi-auto pistil. They then went to the Villa Apartments. Marion went to apartment [redacted] where **Trina West** lives to help her move some furniture. James did not see Marion again until around 7:00 – 7:30 PM when Marion and Kandee drove up in Kandee's car. Marion told James he was going to pull a caper and wanted James to help him with it. He said he was going to rob someone. James got in the car with them and they went to the EZ Shop where Kandee pumped $10.00 gas and then drove off without paying for it. They drove down Highway 78 toward St. George until they passed the new Branchville High School. They turned right on to a secondary road and followed it to McAlhaney Road. When to got to the stop sign at McAlhaney road, they turned left. Marion kept pointing to different houses and saying that he was going to rob them because they had money. James asks Marion where they were going and he replied that he had a caper to pull. Marion then placed his arm around the back of Kandee's seat and pointed his finger toward Kandee's head as if his hand was a gun, then made a motion as if he was shooting a gun. When they got to the end of McAlhaney road, Kandee turned right and back to the left onto another road. Marion told her to stop near a yellow road sign. Marion then gave Kandee a crack rock to smoke. Marion and James got out of the car and began walking away from the car. Marion told James that he was going to kill Kandee because she had been wearing a police wire when she bought drugs from him. Kandee got out of the car and ran down the road toward then and grabbed Marion by his arm and said she was scarred of the dark and did not want to be left alone. A car was heading toward them so they jumped into the woods until the car or cars could clear the area. Kandee and Marion then came out of the woods and were headed back toward the car when James came out of the woods. Marion fired at least 3 shots in the direction of Kandee. Kandee turned and ran toward James screaming and begging Marion not to shoot her again because she had a child to raise. She stopped about 15-20 feet in front of James and turned to face Marion. Again begging him not to shoot her again. Marion pointed the gun at Kandee and fired two more shots. Kandee fell to the pavement, face down. James stated that he messed (defecated) in his pants. Marion made a comment about how hard she fell. Then he garbed Kandee by her legs and pulled her into the woods. James walked or ran past them and got into Kandee's car on the passenger side. Marion returned to the car a few minutes later and they drove back to Branchville. Marion parked the car in a field next to the old coal plant. They ran down the rail road tracks back to the Villa Apartments. Marion had stated he was going to drive the car to Allen Murray's Club. When they arrived at the Apartments, Marion saw Travis Felder and told him to meet them at the head of McAlhaney road after they left the club. James stated he went to apartment [redacted] where he washed and changed clothes. He spent the night at that apartment. On Saturday morning, he got up and took his soiled clothes home and washed them. He later saw Travis Felder and Travis told him not to worry about Kandee or her car, because they were burned up. Travis told James that when they left the club, he followed Marion back to where Kandee was at and they put her in the car and burned the car with her in it. James stated that he did not shoot Kandee Martin or help burn her body.

At some time while R/O and Detective Coleman were conducting the interview with Gadson, other officers had received information from Orangeburg County Sheriff's Office Major Barbara Walters, that the gun in question was suppose to be hidden in a chair in Marion Bowman's house. Officers responded to that location in an attempt to

The State of South Carolina

OFFICE OF SOLICITOR
First Judicial Circuit

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PTI (843) 873-7842

Courthouse, Amelia Street
Post Office Box 1525
Orangeburg, SC 29116
(803) 533-6252
FAX (803) 533-6004
PTI (803) 533-6137

WALTER BAILEY
Solicitor

April 6, 2001

Marva Hardee-Thomas, Esquire
Post Office Box 50503
Summerville, South Carolina 29485

IN RE: STATE OF SOUTH CAROLINA vs. MARION BOWMAN, JR.

Dear Marva:

In response to your Rule 5 Discovery Motion in the above referenced matter, I am enclosing herewith a copy of our file. Our file is also open for your inspection.

Also, please find enclosed herewith for service upon you our **Request for Disclosure** with a **Certificate of Service.**

With kindest regards, I remain,

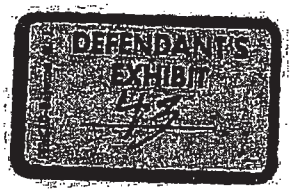
Sincerely,

Robert D. Robbins
Deputy Solicitor

RDR:khh

Enclosures

cc: Hon. Cheryl Graham
Dorchester County Clerk of Court
(with original Certificate of Service for filing)



"[W]here evidence is equally available to the accused, the obligation on the part of the State to furnish such evidence to the accused is relieved." Anderson v. Leeke, 271 S.C. 435, 439, 248 S.E.2d 120, 122 (1978).

Here, this Court finds that Applicant has failed to establish a Brady claim in this situation. First, defense counsel had other means by which it could obtain Gadson's psychiatric report. Gadson's psychiatric evaluation was done by order of the court. **{See Applicant's 8 & 31}**. The court order was clearly public record. Thus, the fact that Gadson was evaluated could easily have been discovered by trial counsel upon examination of court records in the Clerk of Court's office. Counsel was well aware that the Department of Mental Health provided the court with a psychiatric report when ordered to conduct such an evaluation. The Department had done so in Applicant's case. **{See Respondent's 29}**. Thus, had counsel reviewed the clerk of court records for Applicant's co-defendant Gadson, he would have clearly been aware that a psychiatric report to the court would have been available. Counsel could have easily filed a subpoena to obtain a copy of Gadson's psychiatric report from the court. Since this information could have been requested by counsel by other means, Applicant has failed to establish there was a Brady violation. Kelly, supra; Leeke, supra.

Second, Applicant's claim is rejected because he failed to establish Gadson's psychiatric report was favorable or impeaching evidence. Applicant argues that the psychiatric report "revealed serious mental health concerns and questions about Gadson's ability to recall events." **{Applicant's Brief, p. 4}**. This argument is not supported by the report. First, contrary to Applicant's argument, the report does not call into question

Gadson's short and long term memory. Specifically, the report found "no evidence of long or short-term memory impairment." **{Applicant's 8 & 31, at p. 3}**. Further, the report indicates that "[o]n the Repeatable Battery for the Assessment of Neuropsychological Status, he exhibited some mild impairment of verbal memory, but verbal learning was good." **{Applicant's 8 & 31, at p. 3}**. Overall, the report does not indicate that Gadson suffered from any mental illness other than cannabis dependence. Since there was no indication that Gadson suffered from any type of memory impairment that would have affected his ability to recall what occurred in this case, the report would have had no impeachment value in that regard.

The report was also not material. The William S. Hall report does not indicate that Gadson suffered any memory issues as a result of his seizures. In fact, based on the details provided about the seizures, it appears that he is able to recall what occurred before his seizures (i.e. his food consumption, use of marijuana, etc.). Regardless, neither Gadson nor any other witness testified that Gadson suffered a seizure on Nursery Road at the time of the shooting. Further, no witness testified at either trial or the PCR hearing that Gadson smoked marijuana on the day of the shooting. Gadson did admit at trial that he drank alcohol all day on the day of the murder. **{R. 3992-93; 4021; 4031}**. Absent some actual evidence that Gadson suffered a blackout on the scene, trial counsel could not have argued Gadson suffered a blackout.

Further, the overwhelming evidence of guilt in this case clearly shows that this evidence would not have undermined the confidence in the verdicts at trial. Several witnesses, including one of Applicant's sisters, testified they observed Applicant threaten

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to kill the victim on the day of the murder. **{R. 3726, 3739-3744, 3764-66}**. Gadson saw Applicant shoot the victim. **{R. 4000-02}**. According to Gadson, the victim begged Applicant not to shoot her again, but he shot her two more times. **{R. 4012}**. Applicant then dragged her body into the woods. Id. Gadson later rode with Applicant, Hiram Johnson, and Darian Williams to the Allen Murray Club in the victim's car. **{R. 4018}**. They all wore gloves. Id. Hiram Johnson testified that Applicant said he stole the victim's car and he made everyone wear gloves. **{R. 4065}**. He also testified that he heard Applicant admit to he killed the victim. **{R. 4068}**. Travis Felder also testified that early the next morning, Applicant requested assistance in getting rid of a car. Id. Felder testifled that he followed Applicant out to Nursery Road. **{R. 4094}**. He watched as Applicant pulled a body out of the woods. **{R. 4096}**. According to Felder, he saw it was the victim when Applicant put her body in the trunk. **{R. 4097}**. He testified that Applicant admitted that he killed the victim. **{R. 4098}**. He also observed Applicant set the car on fire. **{R. 4100}**. The victim's watch was recovered from Applicant's pants pocket when he was arrested. **{R. 4126-30; 4164-65}**. Applicant's family got rid of the gun that was used in the murder. **{R. 4177, 4185-86}**. The gun they threw in the Edisto River was conclusively matched the five of the casings at the murder scene. **{R. 4315}**. Also, Applicant's DNA was found in the victim at the scene. **{R. 4381}**. Overall, even without Gadson's testimony, there was a very strong case against Applicant.

Moreover, Gadson's credibility had already been impeached by his testimony regarding his drinking. United States v. Amiel, 95 F.3d 135, 145 (2nd Cir. 1996) ("Suppressed evidence is not material when it merely furnishes an additional basis on

U.S. v. Agurs, 427 U.S. 97, 112 n.20, 96 S.Ct. 2392, 2401 n.20 (1976).

Here, as noted before, Ricky Davis told the defense investigator at the time of trial and testified at the PCR hearing that the handwritten statement was not true, and Bowman was the one who gave him all of the information for the handwritten note. **{PCR Tr. 263-64}**. Davis further professed that he did not know anything about this case. **{PCR Tr. 264}**. Assuming that Davis had been called, testified as he did at PCR, and then was impeached with the Sam Memo, it simply cannot be said that a reasonable probability of a different result would occur from such impeachment, especially when the defense already possessed the statement written in Davis's own hand, and could have called him and impeached him with that but decided against it. Said another way, the difference between possible impeachment with the disclosed handwritten statement in Davis's own hand, and impeachment with the Sam Memo or testimony from Sam, is not so great that it undermines confidence in the verdict under the standard for materiality. This is especially so given the overwhelming evidence of guilt, as detailed before.

Overall, Applicant has failed to establish he is entitled to relief upon this claim. As a result, this Brady claim is denied.

B. Trial Counsel was Not Ineffective in Not Presenting Ricky Davis' Testimony Regarding Tawain Gadson's Confession

Applicant alleges trial counsel was ineffective for not presenting evidence related to Gadson's alleged confession to Ricky Davis. At some point, the State was provided with a handwritten note from Ricky Davis, now an inmate in Lieber Correctional Institution for armed robbery. The statement, dated August 6, states "I Rickie Davis was on A side with Gadson and he said that he was the one that shot the girl and he gave Bowman back the

III. Hiram Johnson

A. The State Did Not Violate Brady In Not Disclosing Hiram Johnson's then Pending Charges

Applicant's first Brady claim in reference to Hiram Johnson concerns Johnson's criminal charges. On May 29, 2001, Johnson was served with arrest warrants for Receiving Stolen Goods Less than $1000, Burglary - Second Degree, and Grand Larceny. **{Applicant's 48, 71}**. The Receiving Stolen Goods Less than $1000 charge stemmed from an incident on November 2, 2000. **{Applicant's 48}**. The Burglary charge and the Grand Larceny charge resulted from an incident in Orangeburg County on September 26, 2000. **{Applicant's 71}**. Applicant asserts that the prosecution violated Brady because it failed to disclose these charges to trial counsel.

#40

Applicant failed to establish materiality. First, there was overwhelming evidence of Applicant's guilt presented at trial outside of Hiram Johnson's testimony. Several witnesses, including one of Applicant's sisters, testified they observed Applicant threaten to kill the victim on the day of the murder. **{R. 3726, 3739-3744, 3764-66}**. Gadson saw Applicant shoot the victim. **{R. 4000-02}**. According to Gadson, the victim begged Applicant not to shoot her again, but he shot her two more times. **{R. 4012}**. Applicant then dragged her body into the woods. Id. Gadson later rode with Applicant, Hiram Johnson, and Darian Williams to the Allen Murray Club in the victim's car. **{R. 4018}**. They all wore gloves. Id. Travis Felder also testified that early the next morning, Applicant requested assistance in getting rid of a car. Id. Felder testified that he followed Applicant out to Nursery Road. **{R. 4094}**. He watched as Applicant pulled a body out of the woods. **{R. 4096}**. According to Felder, he saw it was the victim when Applicant put her body in

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Second, the impeachment value of Johnson's pending charges was limited, particularly in view of the overwhelming evidence of guilt detailed above. There is no evidence Johnson actually got any special consideration for his charges due to testimony, and the charges were completely unrelated to the murder of Kandee Martin. Moreover, Johnson was impeached on whether he could remember what occurred as a result of his head injury, and on the fact that his head injury occurred after he was shot by a police officer. **{R. 4071}**. In light of the overwhelming evidence of Applicant's guilt in this case, coupled with the limited impact of an impeachment on the suppressed charges, Applicant has failed to establish this Brady claim. It is denied.

B. There Was No "Wink Wink" Deal Between the State and Johnson

In Applicant's second Brady claim, he asserts that the prosecution failed to provide Applicant's counsel with evidence of a "wink wink" deal between the State and Hiram Johnson for his testimony.

In this claim, Applicant essentially asserts that the Solicitor's Office attempted to use Hiram Johnson's pending charges for Burglary and Grand Larceny from a September 2000 incident, and charges for Receiving Stolen Goods less than or equal to $1000 from a

because Davis told the defense's investigator that his handwritten statement was false and Applicant put him up to it. Counsel also stated that he would still be in the "same boat" based on his investigator's assessment of Ricky even if he had the Sam Memo.[6] **{PCR Tr. 1335-37; 1339}**. Since in substance the Sam Memo did not contain anything the defense was not already provided, and the Sam Memo merely represented nothing more than the prosecution's trial preparation interview based on their possession of the handwritten statement, then there was no suppression of favorable evidence.

Second, the Sam Memo is not material. Evidence is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Youngblood, 547 U.S. at 870, 126 S.Ct. 2188 (internal quotation marks omitted). Moreover, Applicant is incorrect that materiality is measured by the supposed impact the undisclosed notes on defense strategy:

> It has been argued that the standard should focus on the impact of the undisclosed evidence on the defendant's ability to prepare for trial, rather than the materiality of the evidence to the issue of guilt or innocence. See Note, The Prosecutor's Constitutional Duty to Reveal Evidence to the Defense, 74 Yale L.J. 136 (1964). Such a standard would be unacceptable for determining the materiality of what has been generally recognized as "Brady material" for two reasons. First, that standard would necessarily encompass incriminating evidence as well as exculpatory evidence, since knowledge of the prosecutor's entire case would always be useful in planning the defense. Second, such an approach would primarily involve an analysis of the adequacy of the notice given to the defendant by the State, and it has always been the Court's view that the notice com-ponent of due process refers to the charge rather than the evidentiary support for the charge.

[6] Trial counsel never stated that he would have called Ricky Davis to testify had he known about the information in the Sam Memo. Cummings noted that he tried to do more investigation into Ricky Davis based on the information he had, and nothing else came up in the defense's investigation. **{PCR Tr. 1901}**. He also agreed that even with the Sam Memo he would still be in the same boat in deciding whether to call Ricky Davis, because the defense's investigator indicated that Ricky Davis would not testify to what was in the handwritten document, and assessed that Davis was "full of bunk". **{PCR Tr. 1901-02}**.

U.S. v. Agurs, 427 U.S. 97, 112 n.20, 96 S.Ct. 2392, 2401 n.20 (1976).

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