
IN THE

Supreme Court of Alabama

EX PARTE DERRICK O'NEAL MASON

No. 1971489

IN RE: STATE OF ALABAMA,

Petitioner,

DEATH PENALTY CASE
EXECUTION SCHEDULED
SEPTEMBER 22, 2011

—against—

DERRICK O'NEAL MASON,

Respondent.

**PETITION FOR STAY OF EXECUTION AND
RELIEF FROM UNCONSTITUTIONAL SENTENCE**

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Derrick O'Neal Mason is under sentence of death at Holman State Prison in Atmore, Alabama, and he is currently scheduled to be executed on Thursday, September 22, 2011. Pursuant to Rules 8(d)(1) and 2(b) of the Alabama Rules of Appellate Procedure, and Alabama Code § 12-2-2, Mr. Mason respectfully requests that this Court stay his execution scheduled for September 22, 2011. Mr. Mason further requests that this Court remand to the trial court with instructions for it to impose a valid sentence or for further factual development concerning (1) Mr. Mason's trial counsel's ineffective assistance of counsel during the trial and sentencing phases, (2) the prosecution's improper use of race-based peremptory challenges during the voir dire process, and (3) the trial court's failure to permit testimony concerning mitigating evidence.

INTRODUCTION

There are serious issues with the reliability and validity of the verdict and sentence in the capital murder case against Mr. Mason.

Most significantly, Mr. Mason's trial counsel failed to investigate and present witnesses at the sentencing phase who could have testified to Mr. Mason's level of intoxication, past drug abuse, mental health, diagnosis of attention deficit disorder ("ADD"), history of physical and sexual abuse, and degree of susceptibility to peer influence. Counsel failed to develop any of this evidence at the sentencing phase despite the fact that they had access to Mr. Mason who provided testimony about abuse he experienced and his ADD diagnosis and Mr. Mason himself testified to his degree of intoxication on the night the crime was committed.

The reliability of Mr. Mason's sentence is further undermined by the prosecution's use of its peremptory strikes to remove potential jurors solely on the basis of their race, in violation of Batson v. Kentucky, 476 U.S. 79 (1986), and its progeny. Moreover, Mr. Mason's own counsel failed to challenge the State's "reasons" behind its peremptory strikes. As a result, the

prosecution was able to remove six out of the nine African-Americans from the venire by use of peremptory challenges. Mr. Mason's jury ultimately was composed of nine white jurors and three minorities. Mr. Mason's counsel, however, further failed to question prospective jurors on potential racial bias and did not secure and retain records of critical portions of the voir dire proceedings.

Several errors on the part of the trial court, including the failure to permit Mr. Mason to testify about mitigating non-statutory factors during the sentencing phase, cast additional doubt on the sentence. The trial court on multiple occasions refused to let Mr. Mason testify regarding the circumstances of the night of the crime, depriving him of the opportunity to present potentially mitigating information to the jury.

Due to procedural bars and the failure of Mr. Mason's counsel to perfect an appeal of the denial of Mr. Mason's Rule 32 petition, these three claims have

never been reviewed by this Court or the federal courts. This Court has long maintained that, for capital cases, it has a "heightened degree of concern for reliability." Ex parte Woodall, 730 So. 2d 652, 665 (Ala. 1998); see also Beck v. State, 396 So. 2d 645, 664-66 (Ala. 1980) (discussing the role of this Court as a "safeguard to insure that the death sentence is not being imposed arbitrarily or capriciously"). Likewise, the United States Supreme Court has encouraged "extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake." Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring); see also Woodson v. North Carolina, 428 U.S. 280, 305 (1976).

PROCEEDINGS BELOW

Mr. Mason was convicted of capital murder of Angela Cagle in the Madison County Circuit Court on June 16, 1995. The trial court accepted the jury's 10-2

sentencing recommendation on August 14, 1995 and sentenced Mr. Mason to death. (Ex. A, pp. 1-10.)

On March 6, 1998, the Alabama Court of Criminal Appeals affirmed Mr. Mason's conviction and death sentence. Mason v. State, 768 So. 2d 981 (Ala. Crim. App. 1998). The Alabama Supreme Court affirmed the Appellate Court's decision on April 7, 2000. Ex parte Mason, 768 So. 2d 1008 (Ala. 2000). On November 13, 2000, the United States Supreme Court denied certiorari. Mason v. Alabama, 531 U.S. 994 (2000).

Mr. Mason filed a Rule 32 Petition on October 17, 2001. The trial court declined to conduct an evidentiary hearing and on August 5, 2004, summarily entered the State's proposed Order denying the petition. Due to the trial court's clerical error, however, neither side was notified of the denial until April 26, 2005, well after the time to appeal had expired.

On May 27, 2005, Mr. Mason filed a petition for writ of mandamus to the Twenty-Third Judicial Circuit.

The Alabama Court of Criminal Appeals granted Mr. Mason's petition on June 29, 2005 and ruled that the Order dismissing Mr. Mason's Rule 32 Petition be vacated and a new order issued.

On July 7, 2005, the trial court again summarily entered the State's order, this time adding only an introduction to explain the recent procedural history above. On July 14, 2005, Mr. Mason filed an Objection to the Court's Adoption of the State's Proposed Order Denying his Rule 32 Petition. The court overruled this objection and denied the petition on July 29, 2005. Mr. Mason then filed a Notice of Appeal of the denial of his Rule 32 Petition. On September 8, 2005, the Alabama Court of Criminal Appeals dismissed the petition as untimely.

On September 13, 2005, Mr. Mason filed a petition for writ of habeas corpus before the United States District Court for the Northern District of Alabama. The petition was denied on March 3, 2009. Mr. Mason then appealed to the United States Court of Appeals for

the Eleventh Circuit on September 22, 2009. On May 11, 2010, the Eleventh Circuit Court, while holding for the first time that hearsay testimony by an informant - discussed in more detail below - had been improperly admitted in violation of Mr. Mason's Sixth Amendment Confrontation Clause rights, nonetheless affirmed the district court's decision finding the violation harmless. Mason v. Allen, 609 F.3d 1114, 1123 (11th Cir. 2010). The Supreme Court of the United States denied certiorari on April 25, 2011.

On a motion from the State of Alabama, this Court scheduled Mr. Mason's execution for September 22, 2011.

STATEMENT OF THE FACTS

On March 27, 1994, Angela Michele Cagle was found in the back room of the Majik Mart convenience store, shot twice. (Ex. A, p.2.) At the crime scene the next morning, an unidentified African-American male approached the police and asked that the police contact him regarding details of the crime; he then volunteered nonpublic information including the make and caliber of the gun used in the murder. (Ex. A, pp. 44-50.) The

informant then directed the police to Mr. Mason, who he insisted was responsible for the crime. (Ex.A, p. 49) On the evening of March 29, the informant contacted police to tell them that Mr. Mason would soon be at the Hardee's drive-thru and described Mr. Mason's car. (Ex. A, pp. 51-53.) Based on that information, the police arrested Mr. Mason on a 15-month old unrelated misdemeanor warrant. (Ex. A, p. 11.)

Although the informant conveyed detailed information about the crime - suggesting his own involvement in it - the informant was never investigated or even questioned about the source of his information by the police or the prosecution. Likewise, Mr. Mason's trial counsel¹ made no effort to conduct their own investigation of the informant, and made no effort to determine whether the informant was

¹ Mr. Mason's trial counsel were Randy and Jackie Ferguson, a brother and sister team who each had less than five years of experience and neither of whom had participated in a trial of any kind, let alone a capital murder case.

paid any reward money or offered any inducements or deals for the information he provided.

A proper investigation would have shown that the informant planned the crime, persuaded an unwilling Mr. Mason to commit it and provided Mr. Mason with the murder weapon used to commit the crime. In addition, an investigation would have shown that just before sending Mr. Mason to the convenience store, the informant gave Mr. Mason a marijuana cigarette that - without Mr. Mason's knowledge or consent - had been soaked in embalming fluid and PCP (phencyclidine). As a result, Mr. Mason experienced paranoid hallucinations and violent impulses at the time the crime took place, and the informant's acts significantly impaired Mr. Mason's ability to appreciate the seriousness of his acts at the time he committed them.

At trial, Mr. Mason's counsel did not call any witness who could have testified to the informant's influence over Mr. Mason and the informant's involvement in the crime. Not only did trial counsel

not obtain the necessary expert assistance needed to adequately present a defense based on Mr. Mason's involuntary use of marijuana-laced embalming fluid and PCP, trial counsel did not present any defense witnesses. Further, the trial court gave incorrect instructions to the jury on Mr. Mason's intoxication defense, and how intoxication might negate or lessen Mr. Mason's mens rea and, accordingly, the level of his crime.² (Ex. A, p. 55.) Despite the prosecutor's request for clarification on that instruction, the court declined to give it. (Ex. A, pp. 56-57.) Consequently, the jury convicted Mr. Mason of capital murder.

² The trial court also erred in its felony murder instruction when it noted that for one element the prosecution must prove that the defendant caused the death of the victim "in furtherance of or in the immediate flight from the crime of robbery in any degree." (Ex. A, p. 54) However, the court only apprised the jury of the elements necessary to convict on first-degree robbery, and not the lesser second or third degree offenses.

During sentencing Mr. Mason's trial counsel did not fully investigate or present mitigating evidence that would have persuaded the jury to recommend a sentence less than death. Trial counsel did not explain to Mr. Mason and his family the role of testimony concerning Mr. Mason's difficult childhood, abusive upbringing and drug use. Mr. Mason's counsel also did not utilize his school, employment, religious, medical or mental health records, or present an independent expert to provide an opinion as to the connection of Mr. Mason's childhood and the behavior for which he was convicted, and to provide testimony about the effects of Mr. Mason's drug use on the night of the crime.

During voir dire, the prosecution used its peremptory strikes in a gender and race discriminatory fashion. More than half of the state's peremptory challenges were used to exclude minority veniremembers from serving on Mr. Mason's jury. The prosecution — who the Eleventh Circuit held violated Mr. Mason's Sixth Amendment rights by relying on inadmissible

testimony during closing argument – also made repeated remarks to the jury that Mr. Mason, a black man, had attempted to rape or sexually assault Ms. Cagle, a white woman, despite the prosecution’s own expert testifying that there was no evidence of sexual assault. The jury that sentenced Mr. Mason to death voted 10-2 – the minimum verdict permitting a death sentence in Alabama – with the two African-American jurors voting for life without parole.

ARGUMENT

I. THIS COURT SHOULD FULFILL ITS SUPERVISORY AND CONSTITUTIONAL OBLIGATIONS IN DEATH PENALTY CASES AND REVIEW MR. MASON’S CLAIMS

This Court is the highest in the State of Alabama and thus determines the constitutionality of actions under Alabama law. In that role, the Court should stay Mr. Mason’s execution, and remand the case to the trial court with instructions for it to impose a valid sentence or for further factual development concerning the claims Mr. Mason raises below.

The Alabama Code expressly provides that all death penalty cases must be “subject to review by the Alabama

Supreme Court." Ala. Code § 13A-5-53(a), (b) & (d); see also Ala. R. App. P. 39(a)(2). This Court has held that the "death penalty is [a] special circumstance" that justifies the expansion of constitutional rights. Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989).

Similarly, the Alabama Rules of Appellate Procedure recognize that death penalty cases require heightened appellate scrutiny. See Ala. R. App. P. 39(a)(2)(D) (permitting review of claims in death penalty cases even if not preserved properly); Ala. R. App. P. 39(d) (eliminating petition page limitations in death penalty cases). Moreover, the U.S. Supreme Court has "repeatedly emphasized that meaningful appellate review of death sentences promotes reliability and consistency." Clemons v. Mississippi, 494 U.S. 738, 749 (1990) (citations omitted).

"When necessary for reasons of constitutional review and issues of great public importance, this Court has exercised its supervisory authority by issuing the writ of certiorari ex mero motu." Ex parte

State Dep't of Revenue, 993 So. 2d 898, 900 (Ala. 2008) (See, J., concurring specially) (citing Ex parte Apicella, 809 So. 2d 865, 868 (Ala. 2001)); see also Ex parte James, 836 So. 2d 813, 836-38 (Ala. 2002) (Houston, J., concurring specially) (explaining that "this Court, as an appellate court, has the inherent power to recall its judgments" and citing cases in support); Apicella, 809 Sc. 2d at 868 ("This Court raised the third issue ex mero motu: Whether the statutory provision allowing a trial judge to override a jury's recommendation in a capital case violates [the Alabama Constitution]."); Youngblood v. State, 372 So. 2d 34, 35 (Ala. Crim. App. 1978) (concluding that where a sentence had been affirmed, but an intervening opinion called the result into doubt, a rehearing should be granted ex mero motu "[t]o avoid confusion and to assure a final judgment of this court in the instant case conformable to the present views of this court").

II. MR. MASON'S DEATH SENTENCE IS UNRELIABLE BECAUSE HIS COUNSEL WAS INEFFECTIVE DURING THE TRIAL'S SENTENCING PHASE

Mr. Mason's death sentence was rendered in violation of his constitutional right to effective counsel, because his counsel failed to obtain and present at sentencing any expert testimony regarding potential mitigating factors relating to Mr. Mason's mental health or his mental state at the time of the crime. In light of a psychiatric evaluation by a mental health expert explaining Mr. Mason's behavioral disorder and the likelihood that he experienced temporary psychosis due to involuntary intoxication at the time of the crime, it is exceedingly likely that this evidence would have caused the jury to recommend life in prison and not the death penalty.

Defense counsel is under a heightened duty to conduct an investigation of mitigating circumstances in the context of a capital proceeding. Burger v. Kemp, 483 U.S. 776, 822 (1987) ("Where information at the sentencing stage in a capital case may be highly relevant, counsel's burden of justifying a failure to

investigate or present it is similarly heightened."); see also Porter v. McCollum, -- U.S. --, 130 S. Ct. 447, 452-53 (2009) ("[i]t is unquestioned that under the prevailing professional norms at the time of Porter's trial, counsel had an 'obligation to conduct a thorough investigation of the defendant's background.'"); Armstrong v. Dugger, 833 F.2d 1430, 1432-33 (11th Cir. 1987) (stating that the failure to investigate in preparation for penalty phase is unreasonable).

Mr. Mason's counsel fell far short of this constitutionally-mandated duty as many mitigating circumstances existed that trial counsel failed to present to the jury or the judge. See Thomas v. Kemp, 796 F.2d 1322, 134-252 (11th Cir. 1986) (finding ineffective assistance of counsel where little effort was made to investigate possible sources of mitigating evidence).

Counsel's failure to investigate potential mitigating evidence warrants reversal unless there was

a reasonable strategic purpose for not investigating. Strickland v. Washington, 466 U.S. 668, 690-91 (1984) (“[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgment supports the limitations on investigation”). A counsel’s failure to investigate potential mitigating factors is only reasonable if that counsel affirmatively found evidence suggesting that further investigation would be fruitless. See Wiggins v. Smith, 539 U.S. 510, 525 (2003) (“Indeed, counsel uncovered no evidence in their investigation to suggest that . . . further investigation would have been fruitless [.]”). Furthermore, the failure to obtain such expert assistance cannot be trial strategy where counsel has knowledge of indicators suggesting a comprehensive mental health investigation is warranted. Ferrell v. Hall, 640 F.3d 1199, 1228 (11th Cir. 2011).

In contrast, where there are “numerous, obvious indicators” that the defendant’s mental health or

mental state at the time of the crime could relate to mitigating evidence at sentencing, defense counsel is under an unequivocal duty to seek expert testimony regarding such potential mitigating factors. Id. at 1227.

A. Trial Counsel's Investigation of Mr. Mason's Mental Health and Mental State at the Time of the Crime was Grossly Deficient and in Violation of Mr. Mason's Constitutional Right to Effective Counsel

Mr. Mason's trial counsel failed to retain an independent mental health expert to investigate and present potential mitigating evidence during the sentencing phase. This failure was a dereliction of trial counsel's professional obligations, was unreasonable, and resulted in an egregious violation of Mr. Mason's right to effective counsel.

Trial counsel failed to present independent defense experts who would have reviewed medical, social services, school, mental health and institutional records; interviewed Mr. Mason and members of his family; developed a detailed social history; expressed an expert opinion as to the connection between Mr.

Mason's childhood and the behavior for which he was convicted; and assisted counsel in understanding and presenting the evidence of the effect Mr. Mason's background had on him.

Perhaps most importantly, an independent pharmacology expert would have testified about his or her findings and conclusions regarding the effect of voluntary and involuntary intoxication on Mr. Mason's mental state at the time of the crime, as well as the effects of smoking marijuana laced with embalming fluid and PCP on Mr. Mason's reasoning, logic and perception. Indeed, there is no indication that trial counsel even investigated the effects of smoking marijuana laced with embalming fluid and PCP.

In Ferrell, the Eleventh Circuit reversed Mr. Ferrell's death sentence in part because Mr. Ferrell's trial counsel failed to obtain an expert opinion on whether Mr. Ferrell's mental health or mental state at the time of the crime provided mitigating evidence

warranting life imprisonment instead of death. 640
F.3d at 1227.

In this case, as in Ferrell, there were numerous indicators that should have led counsel to obtain expert assistance in investigating Mr. Ferrell's mental health. Both his father and mother testified that Mr. Mason was an unwanted child, which by all accounts led to a deep-seated sense of inferiority and antisocial feelings. (Ex. A, pp. 58-59, 65-66, 68-71.) His mother stated that "Derrick was always a slow child," (Ex. A, p. 60), that he was diagnosed with both dyslexia and ADD as a child, and prescribed Ritalin, which he took for about 4 years before refusing to continue at age 15 or 16. (Ex. A, pp. 61-63.) Mr. Mason himself testified that "it's been such a traumatic childhood, that I recall taking so many medicines, I can't remember which one was Ritalin." (Ex. A, pp. 77-78.)

Mr. Mason's mother also testified that he was sexually abused when he was 7 years old – something he

did not speak of until 12 years later. (Ex. A, pp. 64-65.) And she testified that "he was emotionally unstable and he still is." (Ex. A, p. 67.) Mr. Mason's father testified that he had "spoken to some of the juvenile authorities concerning Derrick, in need of getting him tested, because I could see that Derrick had dual personalities." (Ex. A, pp. 72-73.)

Mr. Mason's trial counsel was aware of, or could easily have uncovered, all of these red flags regarding Mr. Mason's mental health. Because the testimony of Mr. Mason's family members is not a substitute for trained professionals, it was completely unreasonable for his counsel to fail to retain an expert to conduct a psychiatric evaluation in order to uncover mitigating evidence.

Furthermore, the record is overwhelmingly clear that Mr. Mason was exceedingly intoxicated on the day of the crime. Not only was he voluntarily intoxicated as a result of his consumption of alcohol and large amounts of marijuana, but his counsel was aware that he

was involuntarily under the influence of PCP, a psychoactive drug that has the ability to induce psychotic episodes. Trial counsel, however, failed to present this clearly mitigating circumstance related to the crime during the sentencing phase, see, e.g., Hardwick v. Crosby, 320 F.3d 1127, 1167-72 (evidence that defendant was intoxicated at the time of the crime constituted mitigating circumstance even where such evidence was not sufficient as a defense to the capital murder charge itself); see also Ala. Code § 13A-5-51 (2010), thereby abandoning their constitutionally mandated duty of effective representation. This omission prevented the judge and jury from considering that, at the time of the murder, Mr. Mason could have lacked the judgment to conform his conduct to the requirements of the law. See Ala. Code § 13A-5-51 (2010). This mitigating evidence would have been all the more compelling had they been aware that it was the confidential informant who provided Mr. Mason with the laced marijuana.

Trial counsel's failure to present expert testimony regarding the effects of consuming marijuana laced with embalming fluid and PCP deprived the jury of the ability to understand Mr. Mason's state of mind at the time of the crime. Doctor William Alexander Morton, Jr., PharmD, reviewed the trial testimony, an Outpatient Forensic Evaluation Report by Dr. Lawrence Maier, the state's expert, and Dr. Robert A. DeFrancisco's report (referenced below), and concluded in his professional opinion that Mr. Mason was under the influence of PCP, and that this factor was not adequately presented and discussed in the legal proceedings against Mr. Mason. (Ex. C, pp. 10-11.) Dr. Morton provided detailed information regarding the pharmacological effects of the various substances Mr. Mason voluntarily and involuntarily ingested, (Ex. C, pp. 4-8), and stated that if one is experiencing a psychotic episode as result of PCP intoxication, "one's ability to understand right and wrong may be totally

irrelevant if we do not have agreement on what is 'reality.'" (Ex. C, p. 10.)³

In an independent psychiatric evaluation conducted on September 6, 2011 (the first that has ever been performed on Mr. Mason's behalf), Dr. DeFrancisco's report stated as follows:

³ Dr. Morton's affidavit also provides evidence that Mr. Mason's custodial statements should have been suppressed under Miranda v. Arizona, 384 U.S. 436 (1966), because Mr. Mason's intoxication through the consumption of embalming fluid and PCP severely impaired his understanding of his legal rights. Under Miranda, a defendant's custodial statements are admissible only if the defendant was informed of the right to consult with an attorney before and during questioning, of the right against self-incrimination prior to questioning by police, and that the defendant not only understood these rights, but voluntarily waived them. 384 U.S. 436. "A confession that was not the product of free will and rationale (sic) intellect or that was made when the individual's will was 'overborne' by physical, psychological, or drug-induced means, is inadmissible." Parker v. Allen, 565 F. 3d 1258, 1280 (11th Cir. 2009). As the Alabama Court of Criminal Appeals stated in Hubbard v. State, 500 So. 2d 1204, 1218 (Ala. Crim. App. 1986), "In order for intoxication to render a confession inadmissible, it must be shown that the mind of the defendant was substantially impaired when the confession was made." Dr. Morton has clearly shown that Mr. Mason's confession was made when his mind was substantially impaired and when he was unable to exercise his free will due to the consumption of embalming fluid and PCP prior to the crime. Thus, Mr. Mason's waiver of his Miranda rights was involuntary and in violation of his Fifth Amendment right against self-incrimination.

[T]his tragic situation was mitigated by probable drug intoxications which may have led to a drug induced psychosis. The embalming fluid actually mimics phencyclidine (PCP), which is a synthetic dissociative drug that can lead to feelings of detachment from both self and environment. This can precipitate delusions, agitation, and distortion of body senses, which this defendant indicates he in fact experienced.

. . .

I would also conclude that he has a long history of polysubstance abuse as well as a history of inferiority that made him very vulnerable to exercise poor judgment as well as irresponsible and impulsive behavior. The use of hallucinogens and other drugs in combination with a predisposed belief of negativity of oneself and the environment in general i.e. antisocial features would be a poor combination in controlling his behavior. Hence, there are prominent mitigating factors to this tragic offense.

(Ex. B, p. 19)(emphasis added).

The failure of Mr. Mason's trial counsel to obtain and present to the jury at sentencing these "prominent mitigating factors" is an obvious violation of Mr. Mason's constitutional right to the effective assistance of counsel. See Jones v. Thigpen, 788 F.2d 1101, 1103 (5th Cir. 1986) (holding that the trial defense counsel's failure to present any evidence from

a mental health expert as to the defendant's mitigation was "professionally unreasonable" and "prejudicial"); Cunningham v. Zant, 928 F.2d 1006, 1017-18 (11th Cir. 1991) (holding that trial counsel was ineffective for failing to introduce evidence into the capital penalty phase as to his client's mild mental retardation, his medical records, and his headaches from a surgically implanted plate in Cunningham's head).

B. Mr. Mason was Prejudiced by Counsel's Failure to Present Evidence of His Mental Disabilities During the Sentencing Phase of His Trial

The failure of Mr. Mason's trial counsel to investigate and present to the jury expert testimony regarding Mr. Mason's mental health and mental state at the time of the crime was prejudicial because (1) the mitigating information that would have been presented bears directly on the primary aggravating factor that was found, and (2) the jury's recommendation was made based on the bare minimum required to recommend death.

To show prejudice, a petitioner "need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Strickland v.

Washington, 466 U.S. 668, 693 (1984). Rather, where, as here, a petitioner challenges a death sentence, "the question is whether there is a reasonable probability that, absent the errors, the sentencer . . . would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Id. at 695.

In Ferrell, the failure to present mitigating evidence was found to be prejudicial mainly because the evidence related directly to the aggravating factors that were found, such as that it was "coldblooded," "senseless," that he appeared unaffected afterwards, and that the crime was "wantonly vile, horrible, or inhuman." 640 F.3d at 1234-35; see also Hardwick v. Crosby, 320 F.3d 1127, 1164 (11th Cir. 2003) ("[P]sychiatric mitigating evidence not only can act in mitigation, it also could significantly weaken the aggravating factors."). Mr. Ferrell's mental state provided direct mitigating explanations for why he could act in this way. Later expert analysis showed

that Mr. Ferrell was "overtaken by powerful emotions (anger or fear), hallucinations or flashbacks, and has altered behavior after seizures that results in dullness, unawareness and confusion." Ferrell, 640 F.3d at 1235 (emphasis added). These psychotic symptoms are precisely what Mr. Mason would have experienced while under the influence, unbeknownst to him, of the powerful psychoactive drug PCP and embalming fluid.

There were only two aggravating factors found in this case, the statutory factor that the murder occurred during a robbery, and that the crime was "especially heinous, atrocious, and cruel." (Ex. A, p. 5.) As evidenced by the trial judge's sentencing order, the main factor that influenced the court to issue a death sentence was the "heinous, atrocious, and cruel" nature of the crime. As in Ferrell, though, this is precisely the factor that would have been directly mitigated by expert testimony indicating that Mr. Mason was likely operating during a drug-induced

psychotic episode, during which he hallucinated and would have been virtually incapable of understanding the nature of his own actions.

If these facts had been presented at Mr. Mason's sentencing hearing, there is a substantial probability that Mr. Mason would not have received a death sentence, and the failure to investigate and ensure that this evidence was considered by the jury and the court before it sentenced Mr. Mason constituted ineffective assistance of counsel.

The prejudice to Mr. Mason caused by his counsel's failure to present this evidence is particularly clear in light of the fact that only 10 jurors, the minimum required by Alabama law, voted in favor of the death penalty. (Ex. A, pp. 82-83.) Had even one juror changed his or her vote, the jury would have been required, as a matter of law, to submit its vote in favor of life imprisonment. See Duest v. Singletary, 997 F.2d 1336, 1339-40 (11th Cir. 1993) (finding that a change in one juror's vote, which would have resulted

in the jury's vote in favor of life imprisonment over the death penalty, was a factor that weighed in favor of granting relief). Mr. Mason's ineffective assistance of counsel claim has not previously been reviewed by this Court or the federal courts. Further factual development is necessary to create a record of Mr. Mason's mental illnesses and substance abuse and their corresponding effects. Accordingly, the ineffective assistance of Mr. Mason's counsel at the sentencing phase of his trial requires this Court to stay Mr. Mason's execution, vacate Mr. Mason's sentence of death and remand this proceeding to the trial court with instructions to impose a valid sentence or for a new sentencing hearing.

III. MR. MASON'S CONVICTION IS UNRELIABLE BECAUSE HIS TRIAL COUNSEL FAILED TO SELECT AN IMPARTIAL JURY

The State impermissibly removed six of the nine potential African-Americans on the jury panel on the basis of race, resulting in a jury consisting of only three minorities. (Ex. A, p. 27.) This was in direct violation of Mr. Mason's Fourteenth Amendment right to

equal protection of the law and a fair trial by an impartial jury drawn from a cross section of the community. See Powers v. Ohio, 499 U.S. 400, 420 (1991) ("The Equal Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race." (quoting Batson v. Kentucky, 476 U.S. 79, 86)); Holland v. Illinois, 493 U.S. 474, 479 (1990) (holding that "racial groups cannot be excluded from the venire from which a jury is selected" because doing so violates the overriding command of the Equal Protection Clause); Batson v. Kentucky, 476 U.S. 79, 86 (1986) ("Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure.").

Here, the prosecution removed six of the nine African-Americans on the jury panel by use of peremptory challenges. (Ex. A, p. 27.) This was in

direct violation of Mr. Mason's Fourteenth Amendment rights, and resulted in a jury composed of nine white jury members and three minorities. (Ex. A, p. 43.)

At the time, trial counsel did raise an objection, indicating that more than half of the prosecution's peremptory challenges were used to exclude six African-American and one Hispanic potential jurors from serving on Mr. Mason's jury. (Ex. A, p. 26-27.) Mr. Mason therefore established a prima facie case of discrimination, and the burden shifted to the prosecutor to supply race-neutral non-pretextual reasons for exercising the challenges. Batson, 476 U.S. at 96 ("[A] defendant may establish a prima facie case of purposeful discrimination in selection of the petit jury solely on evidence concerning the prosecutor's exercise of peremptory challenges at the defendant's trial.").

However, the race-neutral reasons provided by the prosecution in Mr. Mason's case were, in fact, pretextual. The prosecutor claimed that the challenges

to potential minority jurors were based on reasons such as (1) the veniremember's criminal background; (2) the veniremember's reluctance about the death penalty; and (3) the veniremember's reticence to serve on the jury. (Ex. A, pp. 28-42.) The prosecution, though, did not use the same criteria to strike several white jurors. For instance, Mr. Beasley, a white veniremember, indicated during voir dire that he had a criminal record, but was not struck. (Ex. A, pp. 21-22.) Similarly, Ms. Beegle indicated that she was reluctant to impose the death penalty, yet she was not struck. (Ex. A, pp. 17-20.) Despite the prosecution's attempt to use a reticence to serve on the jury as a race-neutral basis to exclude seven potential minority jurors, virtually every veniremember – black or white – indicated that he or she would rather not serve on the jury. (Ex. A, pp. 23-25.)

Mr. Mason has been hampered in his ability to litigate his Batson claim due to his trial counsel's failure to preserve the record for appeal and

collateral review. The list of the members of the jury pool, strike sheets and juror questionnaires were not made part of the court's record and trial counsel did not maintain the materials in their own files. At a minimum, a remand is appropriate for further factual development of this claim, in order to permit Mr. Mason to gain access to the District Attorney's files using judicially-sanctioned discovery devices.

Mr. Mason's Batson claim has never been reviewed on the merits by the appellate courts of this state or the federal courts on habeas review, notwithstanding the clear evidence that the prosecution unconstitutionally excluded minority veniremembers from serving on Mr. Mason's jury, prohibiting Mr. Mason from being fairly adjudged by a jury of his peers. Mr. Mason's sentence should not be carried out without appellate review of this claim that goes to the heart of the reliability of Mr. Mason's death sentence.

IV. MR. MASON'S DEATH SENTENCE IS INVALID BECAUSE THE TRIAL COURT IMPROPERLY PREVENTED MR. MASON FROM PRESENTING MITIGATING EVIDENCE AT TRIAL AND SENTENCING

Mr. Mason's death sentence is also rendered unreliable by the trial court's failure to permit Mr. Mason to testify regarding non-statutory mitigating factors during the sentencing phase, in violation of the Eighth and Fourteenth Amendments to the Constitution. The prosecution interrupted Mr. Mason four times during his direct examination. (Ex. A, pp. 79-81.) Each interruption occurred in the middle of an attempt by Mr. Mason to recount details related to the crime. Id. Further, not one interruption was followed by an offer from the prosecution or the judge to allow Mr. Mason to finish his testimony as he had planned to present it. See id.

The U.S. Supreme Court's decision in Lockett v. Ohio mandates that the trial court and the jury consider "as a mitigating factor,. . . any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death."

438 U.S. 586, 604-05 (1978) (emphasis added). The only limit Lockett imposes on the type of mitigating evidence presented during the penalty phase is that [the evidence] be relevant. See id. Mitigating evidence is relevant "if the sentencer could reasonably find that the evidence warrants a sentence less than death." Tennard v. Dretke, 542 U.S. 274, 285 (2004)(quoting McKoy v. North Carolina, 494 U.S. 433 (1990)). Because the threshold for relevance is so low, see Tennard, 542 U.S. at 285, it is absolutely essential that all mitigating evidence be presented for consideration by the sentencing judge and jury during the penalty phase in order to avoid a result that violates the Constitution.

With respect to mitigating evidence presented during the penalty phase, four requirements must be met under Lockett and its progeny to ensure the constitutionality of a death sentence:

- (1) The sentencer must be able to "consider" any and all mitigating evidence, and determine whether death is the "reasoned, moral response to the defendant's background, character and

crime" based on that evidence. Penry v. Lynaugh, 492 U.S. 302, 319 (1989) (quoting California v. Brown, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring)).

- (2) The sentencer must be able to "give effect to" a capital defendant's mitigating evidence. Penry, 492 U.S. at 328.
- (3) The sentencer itself may not "refuse to consider, as a matter of law, any relevant mitigating evidence" presented in a case. Eddings, 455 U.S. at 114.
- (4) The defense cannot be prevented from introducing any mitigating evidence. Lockett, 438 U.S. at 605; see also Green v. Georgia, 442 U.S. 95 (1979) (holding it unconstitutional to employ hearsay rule to exclude reliable mitigating evidence).

If any one of the above requirements are not met where mitigating evidence exists that could help a capital defendant avoid the death sentence, the trial court is in violation of both Lockett and the Constitution. In Mr. Mason's case, the trial court failed to meet both the first and fourth requirements under Lockett. The first requirement was not met because, quite simply, neither the sentencing jury nor the judge had the opportunity to consider the mitigating evidence that Mr. Mason would have offered

had he not been repeatedly interrupted by the prosecution. Anything that is reasonably likely to impede the sentencer's consideration of mitigating evidence, as defined by Lockett, violates the Eighth Amendment. See Lockett v. Ohio, 438 U.S. 586, 604 (holding that the Ohio statute did not permit the type of individualized consideration of mitigating factors required by the Constitution). The questions posed to Mr. Mason would have elicited his testimony about the circumstances of the night of the crime, including his degree of intoxication and mental state - testimony that would have had a direct bearing on whether the jury voted to recommend a death sentence or life without parole.

The fourth requirement of Lockett was not met because the prosecution's interruptions prevented Mr. Mason from presenting mitigating evidence to the sentencing jury. If he had been allowed to present this evidence, the sentencing judge and jury would have possessed more of the information required to make a

sound moral decision deserving of society's support, thus decreasing the likelihood of sentencing Mr. Mason to death. As it stands, one cannot be reasonably certain that the outcome of the penalty phase of Mr. Mason's trial would have been the same had this mitigating evidence been presented. Mr. Mason was prevented from testifying about his perceptions of the crime (Ex. A, p. 77), what he might have changed about the night of the crime (Ex. A, p. 74), whether he could contribute to life in a penitentiary (Ex. A, p. 75) and whether any other factors in Mr. Mason's life served to mitigate his crime (Ex. A, pp. 75-76). Mr. Mason was prevented from advocating on his own behalf and describing his life and his circumstances in his own words. Had the jury been able to consider the relevant evidence of Mr. Mason's life story, at least one juror would likely have been persuaded to vote to impose a sentence of life without parole instead of death. The lack of reliability surrounding this aspect of Mr. Mason's sentence warrants this Court's intervention to

stay the execution and remand for further fact development.

V. MR. MASON'S CLAIMS WARRANT REVIEW BECAUSE HE SHOULD HAVE BEEN ALLOWED TO FILE AN OUT-OF-TIME RULE 32 APPEAL

In part, the substantive claims raised above were never reviewed on their merits by this Court because Mr. Mason's counsel failed to file a notice of appeal of the denial of his Rule 32 petition on his behalf within Alabama's statutory limitations period. Alabama rules allow out-of-time appeals when the petitioner is not at fault, see Ala. R. Crim. P. 32.1(f), however, the lower court did not do so in this case. This decision has led to an inequitable result. Mr. Mason was not at fault in failing to meet this deadline, and his counsel's failure to do so should not prejudice his substantive rights in a matter of his life or death.

A petitioner should be entitled to an out-of-time appeal if he shows "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way" and prevented timely filing. Holland v. Florida, 130 S. Ct. 2549, 2562

(2010) (quoting Pace v. DiGugliemo, 544 U.S. 408, 418 (2005)). In this case, as in Holland, the "extraordinary circumstances" at issue involve the petitioner's attorney's mistake and not the petitioner's. See Holland, 130 S. Ct. at 2563-64. Mr. Mason should not be prejudiced by his counsel's failure to file this appeal on time, an action upon which his life might well depend. Most importantly, this failure on the part of counsel would have been entirely unforeseeable by Mr. Mason who believed his petition was being filed on time.

Basic fairness begs that Mr. Mason be allowed to exercise his substantive rights in this case, overlooking his counsel's mistake. Such is especially the case where, as here, if the Rule 32 notice of appeal was filed on time, the Rule 32 trial court's determination, which adopted the state's proposed order nearly verbatim and dismissed Mr. Mason's well-pleaded petition, would have certainly been overturned. See Anderson v. Bessemer City, 470 U.S. 564, 572-73 (1985)

(noting the Court's prior criticism of verbatim adoption of findings of fact prepared by prevailing party); Ex parte Scott, No. 1091275, 2011 WL 925761 (Ala. Mar. 18, 2011) (remanding the case to the Rule 32 trial court because the trial court adopted the State's proposed order near verbatim in denying petitioner's Rule 32 petition); Weeks v. State, 568 So. 2d 864, 865 (Ala. Crim. App. 1989) ("[W]e issue a caution that courts should be reluctant to adopt verbatim the findings of fact and conclusions of law prepared by the prevailing party.").

Unlike in Coleman v. Thompson, 501 U.S. 722, 752-53 (1991), Mr. Mason does not ask a federal court to excuse a default of a state procedural limitation, but asks this Court to exercise its equitable jurisdiction to allow Mr. Mason to raise the substantive legal arguments upon which review has been denied.

CONCLUSION

For these reasons, Derrick O'Neal Mason respectfully requests that this Court stay his execution currently scheduled for September 22, 2011;

because of Mr. Mason's trial counsel's ineffective assistance, the prosecution's improper use of race-based peremptory challenges during jury selection, and the failure of the trial court to permit testimony concerning mitigating evidence, and remand the case to the trial court with instructions for it to impose a valid sentence or for factual development concerning these claims.

Dated: September 15, 2011

Respectfully submitted,

/s/ Ona T. Wang
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EXHIBIT A

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

STATE OF ALABAMA,

vs.

CASE NUMBER CC94-922LHL

DERRICK O'NEAL MASON,

Defendant.

STATE OF ALABAMA
MADISON COUNTY
1995 APR 14 10 11 AM
CIRCUIT COURT

SENTENCING ORDER

The Defendant was charged by indictment with the murder of Angela Michelle Cagle during a robbery in the first degree or an attempt thereof. The trial, including jury selection, occurred June 12 through June 16, 1995. A jury returned a verdict on June 16, 1995, finding the Defendant guilty of the capital offense, whereupon the Court adjudged the Defendant guilty in accordance with the jury's verdict.

On June 16, 1995, a separate sentencing hearing was conducted before the same jury. The jury returned a recommendation that the Defendant be punished by death. Ten (10) jurors voted in favor of the death penalty and two (2) jurors voted for the punishment to be life imprisonment without parole.

The Court had previously been furnished a written Presentence Investigation Report, which was prepared at the direction of the Court, on the Defendant's application to be arraigned as a Youthful Offender, which application was denied. The Court informed the parties of the existence of the Presentence Investigation Report and directed the attorneys for the State and for the Defendant to offer any additional information or corrections, as necessary, to the Presentence Investigation Report.

Pursuant to Section 13A-5-47(b), Code of Alabama, 1975, said Presentence Investigation Report was made a part of the record in this cause.

At the sentencing hearing before the Court, the State, through its District Attorney, asked the Court to fix the Defendant's punishment at death. The Defendant, through counsel, argued that the Court should fix the punishment at life imprisonment without parole.

FINDINGS OF FACTS SUMMARIZING THE CRIME
AND THE DEFENDANT'S PARTICIPATION IN IT

Angela Michelle Cagle was twenty-five years old at the time of her death. She was married. She was murdered during the late hours of March 26, or the early morning hours of March 27, 1994, while working the third shift (10:00 p.m. - 6:00 a.m.) as a convenience store clerk in a convenience store in Huntsville, Madison County, Alabama.

Several days before Mrs. Cagle's murder, the Defendant Derrick O'Neal Mason, borrowed a Davis .380 pistol from a friend of his.

When the Defendant was arrested on March 29, 1994, this same pistol was found in the vehicle being operated by the Defendant. This pistol was delivered to the Department of Forensic Sciences for the State of Alabama and Mr. Brent Wheeler, a firearms expert, stated unequivocally, based on ballistic testing performed, that the weapon recovered from the Defendant was the weapon that discharged the bullets that were recovered at the crime scene, one of which caused the death of Angela Michelle Cagle.

On the night of Mrs. Cagle's death, the Defendant entered the convenience store where Mrs. Cagle was working, and demanded that she turn off the video recorder. There was no video recorder in this store. The Defendant then had Mrs. Cagle go into a back storage room. He tore at her blouse causing four of the buttons to break loose from the blouse, and those four buttons were found on the floor. The Defendant either

ordered Mrs. Cagle to disrobe or he in some way assisted in her becoming disrobed. While clad only in her socks, Mrs. Cagle was sitting on the desk in the storage room at the time of her death.

The Defendant then shot Mrs. Cagle at close range in the left side of the face, which gunshot wound did not cause her immediate death, but shattered the jaw bone and caused great pain and anguish. The victim then fell over on the desk on her left side. The Defendant told the investigators, that Mrs. Cagle moved and that he did not want there to be any witness. He then pointed the gun at the right side of her face and fired a second bullet which caused her immediate death.

Based upon the confession of the Defendant, which was testified to by Mr. Bud Parker of the Huntsville Police Department, and based upon the testimony of Dr. Joseph Embry, the Court can clearly conclude that the events leading to the death of Mrs. Cagle occurred as stated above. In particular, the Defendant told Mr. Bud Parker that after the first shot he saw the victim move, and that is when he fired the second shot.

The Defendant entered the store intending to rob the same, and did in fact attempt to rob the store, but was unsuccessful and then left the scene. Lisa Hamilton, another investigator for the Huntsville Police Department, as did other members of the Huntsville Police Department, found Mrs. Cagle's nude body at the scene, with her clothing on the floor under or near the edge of the desk on which her body was found.

Several witnesses testified that they heard a beeping sound from the cash register which indicated that someone had attempted to open the cash register without ringing up a sale, and the person had punched the wrong key on the cash register.

As stated above, Dr. Joseph Embry testified that the bullet entering the right cheek went into the brain and killed Mrs. Cagle instantly, and that the bullet that entered the left

cheek would not have killed her and would have been painful. Dr. Embry also testified as to abrasions or bruises he found on different parts of her body and which were new or recently inflicted. The two cuts on her face, as found by Dr. Embry, were, according to him, caused by the same instrument. The victim also had recent bruises on her upper and lower left arm and a recent bruise on her left buttock and an abrasion on her left shoulder.

There was no evidence that the victim had been raped or sexually molested, although John Kilbourn, with the Department of Forensic Sciences, testified that a pubic hair found in the pubic combings of the victim was a Negroid pubic hair, which was consistent with the sample pubic hair recovered from Mr. Mason pursuant to an Order of this Court. The victim was Caucasian.

The Defendant was taken into custody on March 29, 1994 and was later charged and indicted for the capital murder of Angela Michelle Cagle.

**FINDINGS CONCERNING THE EXISTENCE OR
NON-EXISTENCE OF AGGRAVATING CIRCUMSTANCES**

Pursuant to Section 13A-5-47(d), Code of Alabama, 1975, which requires the trial court to enter specific findings concerning the existence or non-existence of each aggravating circumstance enumerated by statute, the Court finds that none of the aggravating circumstances enumerated by statute were proved beyond a reasonable doubt, except the following, which the Court does find were proven beyond a reasonable doubt:

- (1) The capital offense was committed while the Defendant was engaged in the commission of a robbery in the first degree, or in an attempt thereof. The jury's verdict finding the Defendant guilty of capital murder, as charged

in the indictment establishes the existence of this aggravating circumstance and the verdict is supported by the evidence. (Section 13A-5-50, Code of Alabama, 1975)

(2) The capital offense was especially heinous, atrocious or cruel compared to other capital offenses. The Court reaches this conclusion based upon the following evidence:

(a) The victim, Mrs. Cagle, was alone, defenseless and of no physical threat to the Defendant.

(b) The Defendant caused or directed the victim to disrobe in his presence, obviously inflicting great fear and humiliation in the victim prior to her death. There is no logical explanation for this behavior on the part of the Defendant except his indifference and even enjoyment of the suffering of this victim.

(c) The victim was shot twice at close range as indicated by the expert testimony. The first shot did not kill the victim but caused great pain as a result of the shattering of the bone or bones in her face. The second shot was fired into her face as she lay helpless and suffering from the first gun shot wound to the other side of her face.

(d) The Defendant planned this crime in advance, obtaining the gun used to kill the victim several days earlier and by parking his vehicle out of view and behind the store.

(e) The Defendant intended to kill the victim by shooting her the second time, realizing that she was still alive, so that there would be no witness to this crime.

(f) The most heinous, atrocious or cruel aspect of this crime was the execution styled killing of this victim. The court can conclude from the evidence presented, and from the confession of the Defendant, that he first made the victim go into the back storage room of the convenience store, which was not visible from the other parts of the store, or to anyone who might pass. He caused the victim to completely disrobe except for her socks, all of her clothing being found under or near the desk on which her body was found. He shot her at close range while she sat naked and completely vulnerable to the actions of the Defendant. Realizing that Mrs. Cagle was not dead because he saw her move, he inflicted the fatal gun shoot wound at close range into the right side of her face. The Court concludes that the crime of this Defendant was extremely wicked, shockingly evil, outrageously wicked and vile and cruel, with the actions of the Defendant designed to inflict a high degree of pain and fear in the victim, with utter indifference to, or even enjoyment of, the suffering of this victim. Any murder of a defenseless victim is to some extent heinous, atrocious and cruel, but the degree of heinousness, atrociousness and cruelty, with which this offense was committed, exceeds that common to all capital offenses.

**FINDINGS CONCERNING THE EXISTENCE OR
NON-EXISTENCE OF MITIGATING CIRCUMSTANCES**

In compliance with the statutory requirement that the trial court enter specific

findings concerning the existence or non-existence of each mitigating circumstance enumerated by statute (Sections 13A-5-51 and 13A-5-52, Code of Alabama, 1975), the Court finds as follows:

(1) The Defendant has no significant history of prior criminal activity. The Presentence Investigation Report, which has not been challenged by the Defendant, or the State, shows the Defendant's prior criminal history to be as follows: as a juvenile he was convicted of Attempted Arson in the first degree, and Sexual Abuse in the first degree. Additionally, the Defendant had a conviction for Speeding, Failure To Yield, Improper Passing, Violation of Probation, and Assault in the third degree. This Court cannot conclude that the Defendant has a significant history of prior criminal activity and considers this to be a mitigating circumstance in this case.

(2) The capital offense was committed while the Defendant was under the influence of extreme mental or emotional disturbance. Prior to the trial, the Defendant requested and was granted by the District Court, a psychiatric examination which was performed by Dr. Lawrence R. Maier, on October 6, 1994. Dr. Maier's written report was made a part of the record in this cause. Dr. Maier found the Defendant competent to stand trial. Concerning the Defendant's mental state at the time of the crime, Dr. Maier determined that the Defendant was "apparently highly intoxicated, although not without the ability to distinguish right from wrong". Dr. Maier concluded that there was not sufficient evidence to warrant a mental state defense, and the Defendant was returned to Court to face the capital murder charge. The Defendant told the investigating officers that he was "high" during the time that he committed this offense. At the sentencing phase before the jury, the Defendant testified that he recalled killing Mrs. Cagle, but then stated on cross examination that he did not remember or recall the details of his crime. He stated that he understood what he did and thinks of it every day. Even

though there was evidence of prior drug use by this Defendant, and drug use on the date of this crime, all of which has been considered by the Court, there is no evidence that Derrick O'Neal Mason was under the influence of drugs and/or alcohol to the extent that it prevented him from appreciating the criminality of his conduct. Therefore, the court finds that the evidence presented on this subject is not sufficient for this Court to find that this is a mitigating circumstance.

(3) With respect to mitigating circumstances numbered (3), (4), and (5) in Section 13A-5-51, there is no evidence nor contention that these mitigating circumstances exist in this case.

(4) The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. The Court adopts the findings stated in Paragraph (2) immediately above concerning "the influence of extreme mental or emotional disturbance". Additionally, the Court finds from the evidence that the method employed by the Defendant in the planning and committing of this crime negate the contention that the Defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. The use of alcohol or drugs may have given the Defendant the tenacity to commit this crime, but there is no evidence to support the contention that this mitigating circumstance, Section 13A-5-51(6), exists.

(5) The age of the Defendant at the time of the crime. The Defendant was nineteen (19) years old at the time he committed this crime. The Court determines that this is a mitigating circumstance in this case.

(6) The court has also considered the aspects of the Defendant's character and record, and any of the circumstances of the offense that the Defendant has offered

in mitigation. Specifically, the Court has considered the family background of the Defendant, the apparent troubles that he had in the public schools of this county, the fact that he was diagnosed at an early age with Attention Deficit Disorder, and that he cooperated with the investigators following his arrest. The Court has also considered the numerous letters addressed to this Court by friends or acquaintances of the Defendant or of his family, most of which have requested that this Court impose a sentence of life without parole.

CONCLUSION

As required by statute, this Court has carefully weighed the aggravating and mitigating circumstances which it finds to exist in this case, and has diligently searched the record for other mitigating circumstances. The Court has also taken into consideration the fact that ten (10) members of the jury recommended that the Defendant be punished by death.

It is the judgment of this Court that the aggravating circumstances of this offense clearly outweigh any mitigating circumstances.

Prior to sentencing, the Defendant was given an opportunity to say anything individually or through his attorneys as to why sentence should not be pronounced.

Accordingly, it is ORDERED, ADJUDGED and DECREED by the Court that the Defendant, Derrick O'Neal Mason, be punished by death.

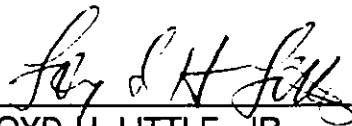
Rule 8(d)(1), Alabama Rules of Appellant Procedure, provide that the Supreme Court shall at the appropriate time enter an order fixing a date of execution.

The Defendant, Derrick O'Neal Mason, shall be committed to the custody of the Warden of the William C. Holman Unit of the Alabama State Prison System at Atmore, Alabama, to await appropriate orders from the Supreme Court of the State of Alabama upon disposition of the appeal or other review of Defendant's conviction and of this sentence. The Order of the Alabama Supreme Court fixing the execution date shall constitute the execution warrant.

Pursuant to the provisions of Section 12-22-150, Code of Alabama, 1975, the Court hereby enters on the record that the Defendant appeals from said judgment of conviction and the sentence imposed. Execution of this sentence shall be stayed pending said appeal.

The Defendant was represented by retained counsel in this case, Jackie D. Ferguson and Randy W. Ferguson. The Defendant, at the time sentence was pronounced, was advised of his right to an appointed attorney in the event that he was unable to afford an attorney, and he was further advised of his rights to a free transcript for appeal purposes, if he was unable to pay for the same. The Defendant and his attorneys were further advised that in the event that the Defendant desired the services of an appointed attorney for appeal purposes or a free transcript, that he was to notify this Court and that the same would be ordered.

DONE this 14th day of August, 1995.



LOYD H. LITTLE, JR.
Circuit Judge

is generally assigned to the guys that get there later.

Q Okay. Now, for purposes of this hearing, which is basically a suppression hearing as it relates to you, can you tell me what you did as it relates to this defendant in this case on March the 29th of last year?

A Yes, ma'am. On the 29th I was given information, certain information about the individual. And we were following up on that information. I had done a check on Derrick O'Neal Mason and found that the subject had an outstanding warrant on him for third degree assault. So at this point in time we started looking for Derrick. I located him around 10:00 p.m. that night. I was already at the CID division in my office. Derrick was brought to the CID division by members of the SR team. He was taken to Investigator Brantley's office. My office is just off of his. I saw him when they took him in there, and when they came out, I went in and identified myself to Derrick. I advised him that -- of course, he knew he was under arrest on a warrant. He had been placed under arrest there at

the scene when he was first picked up. I advised him that I needed to talk to him about that and some other incidents, but prior to us -- myself talking to him that I had a fingerprint technician that had just arrived. I had called him prior to this to have him come to the police department to fingerprint Derrick.

Q All right.

A He was there at that time. I told him he was going to be fingerprinted, photographed, and would interview him concerning the incident.

Q Let me stop you right there. He was taken into Investigator Brantley's office?

A Right. Well, at that point in time it was an interview room. At this time it's Brantley's office.

Q All right. At the time when this occurred in March of last year, there was an office that was used there as an interview room?

A Yes, ma'am.

Q Do you know -- can you tell us what the size of that room is?

A These were roughly 10 feet -- 10 to 12 feet wide, maybe 16 to 18 feet long.

lot on the north side of the building."

I again asked him if he had parked at the gas pumps, and he said, "No. I parked at the door, which was locked."

Q Let me stop you right here and ask you a question. Why did you ask him if he pumped \$5 worth of gas?

A Because the -- someone had pumped \$5 worth of gas at that pump on the north side of the store that night, and a light was blinking in the store that got our attention.

Q All right. Did he say anything else?

A I asked him if he had anything else he wanted to tell me, and he said, "No, I can't think of anything else." I asked him if he was on any type of drugs the night during the interview, and he said, "All I have had is two pulls off one." I asked him what time that was, and he said, "9:00 or 9:30 p.m." I asked him if he had been drinking, and he said, "I have had a drink of Old English 800." I asked him if he was intoxicated, and he said no. I asked him if he had understood everything I had said to him, and he said, "Yes." I asked him if he wanted to write me a statement in

supposedly had happened the night before. I really just did not know.

Q Did he look different in his eyes or his expressions?

A I wouldn't say his eyes looked any different. He looked normal, but, yes, his expressions most definitely. I'm serious. Until halfway through court, I did not -- I don't think I even got a word out of him until finally he had to talk in court, and he finally started opening up.

Q Did he seem scared?

A I wouldn't say scared. I honestly don't know how to describe it. His mind was somewhere else, is the best way I could put it.

Q Is it unusual to see someone like that that's in the city jail?

A Sort of. I see some mental cases that way and I see some drug-related cases that way.

Q You stated that you asked him a number of questions --

A Yes.

Q -- that morning.

A "You need to get up." You know, "What wrong with you?" You know, that sort of thing --

because he wouldn't get up off his bunk.

Q And what were his responses?

A He had no response.

Q Do normally the inmates answer your questions when you ask them?

A Yes, sir, they do. I have very little trouble getting inmates to comply with me at the jail.

Q Now, did Derrick seem different the afternoon after he went to city court?

A Yes, sir. He started coming around and acting fairly normal. You know, he seemed to have a lot on his mind. He was talking and -- talking to some other inmates and things, but it wasn't -- it wouldn't -- it was like he didn't want me to hear it. He would stop every time I come around. But at least he was talking, you know. We couldn't --

Q Have you ever seen anybody coming off using drugs and alcohol?

A Yes, sir.

Q Did it seem to you as if he might be coming off of some substance?

MS. HALL: Judge, I object to the form of

interject one thing here. That question is perfectly fair, but I want you to understand that that question is not being solicited to get a commitment from you that you would vote for the death penalty. It's a perfect area of inquiry, to know that you could do so if you are convinced of all the elements required to impose that, but it is not made in any effort by Mr. Morgan to commit at this point that that would be your vote. Thank you.

MR. MORGAN: That's correct.

A JUROR: I have a problem with that, if -- I don't think I could say the death penalty.

MR. MORGAN: If you were otherwise convinced of the defendant's guilt beyond a reasonable doubt -- and we will talk about reasonable doubt in a little bit -- that he is guilty as charged, you would not be able to vote for the death penalty?

A JUROR: I don't think I could.

MR. MORGAN: Is that based on religious beliefs?

A JUROR: Yes.

MR. MORGAN: Personal philosophy?

A JUROR: Religious.

MR. MORGAN: Religious?

A JUROR: Yes.

MR. MORGAN: Is there any circumstance under which you feel like you could vote for the death penalty?

A JUROR: I really do not know, you know. I haven't been in that position, so I don't know.

MR. MORGAN: Well, I can appreciate that, because not many of us have been. But we have to lay that heavy burden on someone, and it usually ends up -- well, it always ends up being on a jury.

Are you telling us, then, that you don't think there is any circumstances under which you can impose the death penalty?

A JUROR: I don't think I could do it.

MR. MORGAN: What was your name?

A JUROR: Vicki Beegle.

MR. MORGAN: Judge, you want to explore that any further before I go on?

THE COURT: Mrs. Beegle, if you would, come up a minute.

(Whereupon, counsel and said juror

approached the bench and the following occurred:)

THE COURT: I understand your feelings and I think you said they are based on religious grounds?

A JUROR: Yes.

THE COURT: And that's all right, but what I need to know and the ultimate question is, could you set aside those feelings and follow the law as I give it to you, even though it might be a religious principle that you feel strongly about, could you set those personal feelings aside and follow the law?

A JUROR: I don't know. I really don't. I couldn't be sure. I know I could listen to the evidence and decide guilt or innocence, but if they personally asked me, I don't know if I could.

THE COURT: Any questions?

MS. HALL: Yes. Let me explore this with you. Do you think your feelings on the death penalty would interfere with your ability to sit through the evidence and make a decision in the guilt phase?

A JUROR: No, not at all.

MS. HALL: If and only if the jury were

to decide that the defendant were guilty of capital murder, we would be moving to the sentencing phase. The State would present aggravating circumstances and the defense would put on testimony or present evidence as to mitigating factors, and it would be up to the jury to weigh and balance those. Could you do that? Could you weigh and balance the aggravating and mitigating circumstances in coming up with an advisory decision on death or life without parole?

A JUROR: No, I could not. I couldn't do that.

MS. HALL: Okay. Are you saying, then, that there are no circumstances, regardless of the evidence, that you could render a verdict -- impose the death penalty?

A JUROR: I don't think I could. I think it's fair to say that, you know -- I don't know.

MS. HALL: Does it just depend on the facts?

A JUROR: It bothers me.

THE COURT: Is the true answer right now, you just don't know?

A JUROR: I just don't know.

THE COURT: Never been there, you don't know?

A JUROR: I don't, right.

THE COURT: Any questions from the defense?

MS. FERGUSON: Would there be some circumstance in some case with some type of terrible, terrible facts that you think you might be able to impose the death penalty?

A JUROR: I don't know.

MS. FERGUSON: Okay.

A JUROR: That is all I can say.

THE COURT: Any other questions?

MS. HALL: Not right now, Judge.

MR. MORGAN: Not now.

THE COURT: You can have a seat, ma'am.
Thank you.

(Whereupon, Mr. Morgan continued to conduct a voir dire examination of the jury venire as follows:)

MR. MORGAN: Mrs. Beegle, thank you very much. I certainly don't mean to single you out, but we appreciate your being candid with us. Anyone else? The rest of you -- yes, ma'am.

to me -- the utilities and everybody else that was out there was great. The policemen were very unprofessional, they were just very unthinking. If you asked to walk in, they said they would arrest you. If you asked to go around in the field, they said they would arrest you. They just didn't care.

MR. MORGAN: Okay. Thank you. Any other experiences that you have had with law enforcement other than that?

A JUROR: All the other experiences have been fine. I even have a friend that's a policeman.

MR. MORGAN: Okay. Well, let me go through the list, then. Start with Mr. Beasley.

A JUROR: Yes, I had an encounter with a DWI at a younger age. I was beaten somewhat, but I have no ill feelings toward that. As I look back now, maybe I deserved it, you know. I was pretty drunk at the time, so -- I don't drink now, haven't in a number of years, but that was the only encounter that I could think of with law enforcement that I was -- that was unpleasant.

MR. MORGAN: Well, I intend to ask this

question of all of you, but I'll ask you now, Mr. Beasley. Would that unpleasant experience that you had with law enforcement have any bearing on your ability to sit on this jury, if you are chosen, and render a fair and impartial verdict?

A JUROR: No, sir.

MR. MORGAN: For both the State and defendant, based on the evidence?

A JUROR: No, sir.

MR. MORGAN: You wouldn't be less likely to believe a police officer because of your unpleasant experience?

A JUROR: No, sir.

MR. MORGAN: And, Mrs. Zachary, how about you? Same question.

A JUROR: No.

MR. MORGAN: You would be able to put that unpleasant experience out of your mind?

A JUROR: Yes.

MR. MORGAN: And render a verdict based on the evidence in this case?

A JUROR: Yes, sir.

MR. MORGAN: Okay. And I'll just ask the rest of you. Mr. Childers -- I have got only last

follow-up questions. Maybe we can get this tied up. Does everyone here agree that they will follow the law as the Judge instructs them to? Okay.

Is there anyone here who believes that your personal opinions are such that no matter what the law is that the Judge gives you, with your personal feelings on the death penalty or life imprisonment, that you could not follow the law as the Judge gives you?

Is there anyone here who would not consider mitigating circumstances, if they are proven and if the Judge instructs you that they are mitigating circumstances or they can be considered, is there anyone here who just wouldn't consider mitigating circumstances in the event that the defendant is convicted?

Just one second.

(Brief pause.)

MS. FERGUSON: I think Mr. Morgan asked this earlier, but is there anyone here who, for any reason, and I won't ask you what the reason is, just does not want to sit on this jury for any reason? Well, just about everybody. Okay. If you could, just stand and state your name.

A JUROR: Ayers.

MS. FERGUSON: Okay. Go down the first row.

A JUROR: Angela Bradford.

MS. FERGUSON: Anyone else on the first row?

A JUROR: Patsy Chesser.

MS. FERGUSON: Mrs. Chesser.

A JUROR: Donald Dukemineer.

MS. FERGUSON: Okay.

A JUROR: Vicki Beegle.

A JUROR: Thomas Helton.

A JUROR: Regina Hayley.

MS. FERGUSON: Mr. Byars.

A JUROR: Walter Byars.

MS. FERGUSON: I'm sorry, my list --

A JUROR: Fortin.

MS. FERGUSON: Mr. Fortin.

A JUROR: Hudson.

MS. FERGUSON: Hudson.

A JUROR: Larry Hurst.

A JUROR: Patrick Hutchens.

A JUROR: Becky Keel.

MS. FERGUSON: Okay.

A JUROR: Kerr.

A JUROR: Lockhart.

A JUROR: Walker.

MS. FERGUSON: Anyone on the back row?

A JUROR: Jean Wood.

A JUROR: Whitten.

MS. FERGUSON: Mrs. Whitten.

A JUROR: Mrs. Whitt.

MS. FERGUSON: Mrs. Whitt. Anyone else?

Several people have come in and out of the courtroom while we have been here. Is there anyone here that sees someone in the courtroom, perhaps you don't even know their name, that you recognize or see somebody in the courtroom that you know that you haven't already identified? I know it sounds --

A JUROR: I know the sheriff.

MS. FERGUSON: Other than the sheriff, is there anyone that anyone sees?

A JUROR: I know the sheriff.

MS. FERGUSON: Anyone else?

That is all. Thank you very much.

THE COURT: Ladies and gentlemen, I'm going to just go over a couple more things with

THE COURT: Is that the 14 according to the defendant's list?

MS. FERGUSON: Yes, sir.

THE COURT: All right. Anything further before I bring the jury in?

MS. FERGUSON: Yes, sir.

THE COURT: All right.

MS. FERGUSON: We would like to make a Batson motion.

THE COURT: All right.

MS. FERGUSON: Judge, according to our records -- first of all, let me say that the defendant is a member of a racially cognizable group, he is an African American, and according to our records there were a total of nine African Americans left on the jury panel, and there was one Hispanic left on the jury panel. And the State has struck -- do you want me to list the numbers --

THE COURT: All right.

MS. FERGUSON: -- of what was left on or just --

THE COURT: However you want to make your motion.

MS. FERGUSON: Okay. No. 1 was

Hispanic. No. 2, 7, 17, 21, 24, 28, 34, 38, and 40 were all African Americans. The State struck No. 1, No. 2, No. 7, No. 24, No. 28, No. 38, and No. 40.

Judge, our position is that the State has exercised their peremptory challenges to remove from the venire members of the defendants race, and a -- one person who was Hispanic, who is a member of another minority race. And the only thing these jurors have in common is that they are minorities.

We assert that there are no valid reasons for striking them. We believe this has shown a pattern of strikes against African American jurors, then against Hispanic jurors. I believe No. 1 was the only Hispanic juror on the venire. We believe we have shown a prima facie case of discrimination.

THE COURT: What's the basis of your prima facie case?

MS. FERGUSON: Judge, that these jurors, as a whole, had nothing in common, there were no valid reasons for striking them with the exception of the fact that -- of their race.

THE COURT: What's the State's response?
What's your response?

MS. HALL: Your Honor, we don't believe that they have made out a prima facie case; however, given that this is a capital murder case and that there is a heightened standard of review, we did not strike any of these individuals because of their race, be they African American, Hispanic, or Caucasian. They were struck for race neutral and other reasons. And we are prepared and will gladly state our reasons for our strikes.

THE COURT: All right. Please do so, and that will clear up the issue.

MS. HALL: Okay.

THE COURT: Then I can rule.

MS. HALL: First, we would state, and I will with the Court's permission and Ms. Ferguson's agreement, go in the order they are listed here.

THE COURT: Chronologically?

MS. HALL: Yes, sir, here on the list.

THE COURT: On the strike list?

MS. HALL: Yes, sir. First, we struck Mr. Hudson, No. 28, who, quite frankly, we believe

that we had enough to challenge him for cause.

THE COURT: Wait just a minute, let me get you to start over.

Janna, how about you and Wayne stepping out the door and tell the jury if they want to go back and get another Coke or cup of coffee, to give us another 15 -- do you think 15 will cover it?

MS. FERGUSON: I wouldn't think it would take long at all.

THE COURT: I hate to keep them out there if they want to go get a Coke or something. Tell them to take a 15-minute break, if they wish to, that we are having a little further delay -- well, don't tell them that. Tell them we will get to them as quickly as we can.

Go ahead, what was your first number?

MS. HALL: No. 28, Mr. Hudson. Mr. Hudson tried yesterday and several times today to approach the bench. I recall him even coming up at the lunch break, attempting to get to the bench, Your Honor.

We believe we had enough to challenge him for cause; however, we would use a peremptory strike on him. He knows the defendant's family, he

says he is a Seventh Day Adventist, that he knows of the defendant, knows his whole family, and that in his church, church members are like family. And he has indicated a number of times, we believe, that he can't really be fair because of that. And to support our argument, Your Honor, we would cite Battle vs. State, found at 574 So.2d 943, which is an Alabama Court of Criminal Appeals case rendered in 1990, that indicated that if a prospective juror has knowledge of a defendant and/or his family, that that is a sufficient race neutral reason for that strike.

THE COURT: I overrule the challenge as to Errol Hudson. What's the next one? I'm sorry, do you have any response to that?

MS. FERGUSON: No, sir.

THE COURT: Okay. What was the next one?

MS. HALL: As to No. 2, Mrs. Ayers, she, again, this morning indicated that she did not want to serve. She was one of the first to approach the bench indicating that she did not want to serve. She raised her hand on a number of occasions indicating she did not want to serve. She indicated that she knows of the defendant's

church. And, perhaps, Your Honor, not knowing what the defendant's case will be, it may be that they put on witnesses, either in their case in chief or in the sentencing phase, who are members of that congregation that may be known to Ms. Ayers, which we feel will be a conflict and could create some bias at a later date. Additionally, Your Honor, she has been in criminal trouble herself for possession of a controlled substance here in Madison County, Alabama. One of her sons --

THE COURT: Wait a minute. Okay, go ahead.

MS. HALL: She has two sons, their ages are 20 and 22, and that was not the reason she was struck, because of the ages of her sons being similar to the defendant's; however, one of those two sons is currently -- or has been recently in jail here in Madison County, Alabama.

THE COURT: All right. Any -- do you have any response to those reasons?

MS. FERGUSON: Judge, I believe that Mrs. Ayers acknowledged she didn't actually go to the church that the defendant goes to. I think she

said she had a friend that went there. I don't think her knowing anyone in that church would have anything to do with whether or not she would be an appropriate juror. Also, there were other people on the jury that indicated that they didn't want to stay on the jury --

THE COURT: Well, that's true.

MS. FERGUSON: -- from the beginning, also. I don't believe that's a valid reason.

THE COURT: She did, every opportunity when she could say something indicating her difficulty in being a fair and impartial juror, she raised her hand, as I recall. Anything else from the State on Mrs. Ayers?

MS. HALL: No, sir.

THE COURT: What was her connection with the defendant's family?

MS. HALL: She just indicated -- and I don't have a quote verbatim -- but that she knew members of the church that the defendant and/or his family had attended.

THE COURT: All right. Anything further from the defendant?

MS. FERGUSON: No, sir.

THE COURT: I overrule the challenge as to Ms. Ayers. Your next -- let me state, also, for the record, when Mrs. Ayers came up to the bench, as I recall, yesterday, I don't remember why -- but didn't she approach the bench on one question?

MS. HALL: She approached early this morning, I recall.

MS. FERGUSON: This morning, yes, sir.

THE COURT: She appeared to me to have -- to be under real strain about the possibility of serving on this case for the reasons that she expressed and possibly others that she couldn't communicate, just because of her feelings about this type of a case. And I was concerned about her ability to give full attention to both the evidence portion and the law. She just seemed to be really stressed by the situation.

Go ahead, who is your next one?

MS. HALL: Judge, I have misstated, and I want to correct the record before we go any further. Ms. Ayers does have two sons, 20 and 22 years of age. However, she does not have a son who was recently incarcerated in the Madison County Jail. It was our next strike, No. 40, that I am

about to discuss.

THE COURT: Okay. She indicated she had a son who had been charged with carrying a concealed weapon and served community service and probation.

MS. HALL: Mrs. Ayers?

THE COURT: Mrs. Ayers did on her questionnaire.

Who is the next one, No. 40?

MS. HALL: No. 40 would be Walter, Miss Lucy Walter. Miss Walter was struck for a number of reasons. One, because of a criminal history that was prepared indicating that Miss Walter has, herself, been convicted of a crime of moral turpitude, being theft. She was also charged with carrying a concealed weapon. She has had a son -- she has four sons, and, again, this was not the specific reason, but she has four sons between the ages of 16 and 24, one who I believe she indicated was currently in the Huntsville City Jail. She is familiar with the establishment Erney's, which our information tells us the defendant had previously worked at Erney's as a barber. She is familiar with Erney's. She is, perhaps, and I would state,

familiar with the employees and patrons of that particular establishment. She also knows Lawrence Chester, who was a friend of this defendant's. And, again, Your Honor, I don't know what type of case they intend to put on, and whether they intend to put anyone from Erney's on the witness stand or Lawrence Chester on the witness stand. And that was the reason that she was struck.

THE COURT: Response?

MS. FERGUSON: No, sir.

THE COURT: I overrule as to Lucy Walter.

And your next one?

MS. HALL: Let me state for the record, there was some discussion about Mrs. Ayers being struck because she did not want to serve. Other jurors, Caucasian jurors, were struck because they didn't want to serve, particularly. I have just jumped over No. 18, Mr. Fortin. He was struck because he did not want to serve, also. And I would like for that to be in the record.

No. 38 was Mr. Walker. Mr. Walker was struck for a number of reasons. First, we would state that he has a relative who has been arrested

for, accused of -- and I don't know about the conviction of, but a relative incarcerated for theft. He indicated during the voir dire by Mr. Morgan that he felt in a capital murder case that the burden of proof should be greater than beyond a reasonable doubt. He indicated that he would be more inclined, if it reached the sentencing phase, to vote in favor of life without parole. His answer, Your Honor, to questions 51 and 56 of the State's questionnaire, were taken into consideration by us in our strike of Mr. Walker. He indicated he had had some unpleasant experiences involving law enforcement. And, again, this is not the exclusive reason he was struck. But he stated here that there have been a couple of policemen that have been unnecessarily rude. And, primarily, what was of consideration to us was his answer in No. 56 and his answers here in open court, that he could not impose the death penalty lightly and would have to have overwhelming evidence to do so. In addition to that, Your Honor, Mr. Walker was struck by the State because he was 14 minutes late this morning to court.

THE COURT: Then again this afternoon at the break he was five or so minutes, which indicated maybe he didn't listen very well. But, anyway, that by itself would not be sufficient, probably. But the other reasons I think are. What response do you have?

MS. FERGUSON: Judge, we have no response to that.

THE COURT: I will sustain as to -- excuse me. I overrule the challenge to Mr. Bertram Walker. Next?

MS. HALL: Judge, Ms. Hayley is No. 24. She, to the best of my recollection, was one of the first jurors to the bench this morning. She was crying, very upset. She indicated initially that she could, under no circumstances, impose the death penalty. Then she indicated that she was uncertain. She also stated on a number of occasions that she just did not want to serve. She is the exact same age as this defendant. He worked in a fast-food restaurant-type setting, she works at Wendy's, a fast-food restaurant-type service. She is also a cousin of a defendant that I prosecuted, Your Honor, for rape, burglary, and

assault, Michael Lacy. She stated her knowledge of me and was a participant in that case. She also, like others, indicated that she knew individuals at the defendant's church.

THE COURT: Any response?

MS. FERGUSON: Judge, we would take issue with her being one of the first individuals up to the bench this morning. It was only when Mr. Morgan got into the death penalty part of his voir dire, did she get upset, I think. She was not hysterical or anything. She did have tears but she wasn't openly crying in court. I think that's over-characterizing it.

THE COURT: I don't remember if she was one of the first or not, or when she came. I know she came up to talk. I remember distinctly looking at Ms. Hayley when she was responding to questions, and sometimes when she was not responding to questions, her body language, her hands rubbing on her face in a very -- what I would describe as a very distraught manner, that I don't think I can stand this, I can't be here, I don't need to be involved in this. It was that type of body language that she was projecting to me very

clearly. I would not have thought anything about it until she made the responses that she did at the bench.

Anything further from the defendant on Ms. Hayley?

MS. FERGUSON: We would take issue with her being struck due to her age. I think that would be an invalid reason and also due to the fact she works at fast food. I think that might be a characterization upon her station in life, perhaps a reflection on her race.

MS. HALL: Judge, let me just state that she was not struck for her race, and we do not mean to imply that because she works at a fast-food restaurant that she is a member of a certain race. She was struck for race neutral reasons, taking into consideration, primarily, her responses that she just didn't want to be here, and her -- as you have indicated, her body language, her tears, and her uncertainty about the death penalty.

THE COURT: I overrule as to Regina Hayley.

Next?

MS. HALL: Mrs. Bradford was struck

because of her responses to questions, because she indicated that she has a brother who has been incarcerated for a crime. She, like Mr. Walker, indicated and she was, to the best of my recollection, the first person to raise her hand and the first person to engage in dialogue with Mr. Morgan, that she felt like there needed to be a higher burden of proof in a capital case. I wrote "Burden greater in capital cases" is what I have indicated for her. That she felt like in a case like this the evidence should be overwhelming, but, more important than that, that she felt like the standard -- that there should be more than a reasonable doubt, she felt like she should have a greater burden in a capital case.

THE COURT: Response -- excuse me. Other reasons?

MS. HALL: The only other reason we would have, Your Honor, relates to her actions here in the courtroom. Obviously, in this world, when you initially see people and react to them, no matter what race they are a member of, you have some initial reaction to them. We never noticed Ms. Bradford smiling at the State, nodding in

agreement with the State, but everyone on the State's side, including family of the victim, noticed Ms. Bradford smiling at the defendant's relatives. And that was one of the reasons that she was struck, as well.

THE COURT: Did she acknowledge any knowledge or acquaintance, however slight, with the defendant's family?

MS. HALL: Not to my recollection, Your Honor.

MS. FERGUSON: Judge, we would like to respond to that.

THE COURT: Yes, ma'am, please.

MS. FERGUSON: Judge, she was sitting practically up on the defense. I mean, she was sitting within three feet of us. I think that it is very likely that she would have eye contact and smile at people sitting right next to her. I think that there is absolutely no basis for asserting that she was favoring one side or the other. I think it was just purely where she was positioned in the courtroom.

THE COURT: She did respond that she felt -- I think Mrs. Bradford was the other one

that responded, there was two that responded that there should be a higher burden or tougher burden of proof. Do you recall her saying that?

MS. FERGUSON: Yes, sir, we do.

MR. MORGAN: Judge, if I might add, quite frankly, I liked Mrs. Bradford as a juror until that response, then we felt that we just didn't -- no longer wanted her as a juror, after she expressed to me that she felt like the State should have a higher burden of proof.

THE COURT: I'll overrule as to Mrs. Bradford.

And next?

MS. HALL: Judge, to the best of my recollection, the only one that's left, that was raised by Ms. Ferguson, would be juror No. 1. Judge, my -- the reasons for our strike of Mr. Amaromateo or Amaro -- I don't know exactly what his name is, it appears several different ways here on the documents that we have all received.

THE COURT: Juror No. 1?

MS. HALL: Juror No. 1. When he stood yesterday and introduced himself to the Court, I found -- he was not understandable to the State. I

be safe, I don't want to make a mistake with the jury standing there in the door, our jurors are -- I'll just call the number -- No. 1, No. 4, No. 5 as the second alternate, No. 8, No. 17, No. 21, which is the first alternate, 23, 26, 27, 34, 36, 45, 48, and 50. Is that the State's jury?

MR. MORGAN: Yes, Your Honor.

THE COURT: Is that the defendant's jury?

MS. FERGUSON: Yes, sir.

THE COURT: If you will, bring them in again. Tell them they can take the back seats and stand up on the sides, will be fine.

(Whereupon, the jury panel was returned to the courtroom; at which time, the following occurred:)

THE COURT: All right. Ladies and gentlemen, thank you again for your patience.

I'm going to call out 14 names. I'm simply calling them alphabetically. As I call your name, if you are on this side of the courtroom, just to make it easy, just go into the jury box, front or back row, go to the middle. If you are on this side, come in that side and go

until some two or three days later, that scene was secured. We roped it off and an officer was placed there at the location to keep everybody away and out of the lot until we could clear.

Q Was Officer Dewey Miller one of the officers stationed there to secure that scene?

A Yes.

Q And were you contacted by Officer Dewey Miller?

A Yes, I was.

Q What was it, what did you discuss?

A He advised me that a black male had come down the road by the scene and was standing outside the roped area. He said he approached the subject and that he just asked him, you know, if he needed anything, that he needed to stay away from the area. And the subject asked him certain things about the incident that occurred there at the store. And Officer Miller asked him if he knew anything about the incident. And his response -- Officer Miller became suspicious and asked him, again, and in return he asked Officer Miller if he knew what kind of weapon was used. Officer Miller had told him, no, because he didn't know.

Q Let me stop you there. The individual that approached the store asked Officer Miller what type of weapon was used in that homicide; is that correct?

A Yes, ma'am.

Q And what was Officer Miller's response?

A He didn't know.

Q He didn't know.

A No, ma'am.

Q What were you informed of later?

A He advised the young man he needed to talk to the investigators. So the young man gave him a name, where he could be reached. And in turn Officer Miller called me, gave me the information, gave me the number. I contacted the subject at that number.

Q When was that, Investigator Renfroe?

A It was probably 15 or 20 minutes after the original contact with Officer Miller, because he said the young man had to walk, he was not in a vehicle, he was going to have to walk to his residence and just give him some time to get there before I called.

Q All right. And that was on the 28th?

A Yes, ma'am.

Q Do you have a recollection as to whether it was morning or afternoon?

A It seems like it was between the morning hours between 9:00 and 11:00 in the morning.

Q And did you in fact make telephone contact with this subject?

A Yes, ma'am, I did.

Q Did you have a conversation with him?

A Yes, I did.

Q Please tell us about that.

A He wanted to know what kind of weapon was used, and I told him I wasn't going to tell him that, that -- I asked him what kind of weapon would he be interested in, and he said, "A .380." And when he said, "A .380," then I asked him when could we meet, I needed to talk to him. At this point he says that it wasn't possible to meet with him that day, and that would he make contact again in the morning, which would have been the next day, and he did so, contacted me again by phone.

Q And that would have been Tuesday morning, March the 29th?

A Yes, ma'am.

Q He contacted you by telephone?

A Right.

Q And you had a conversation?

A Right.

Q What did you talk about?

A I asked him if -- by this time forensics had looked at the weapon. Of course, we knew what caliber it was, to start with, but, of course, a make, you know, it can be one of several makes. And we were zeroing in on one particular brand of weapon. And that was a Davis, as I recall. Could have been another type, but more than likely it would have been a Davis. So when the subject called me that morning, we were talking about the meeting and I asked him if he knew --

Q Let me stop you here. Y'all had planned to meet face to face?

A Yes, ma'am.

Q You said you were talking about the meeting?

A Right.

Q Tell me what you asked him next.

A I asked him if he knew the brand name of the weapon, and he said, "No." He said that he

would have to check and see if he could determine what the brand was. Hung up with him. Several -- I don't know what time period passed by and he calls back and advises me that it's a Davis.

Q Advises you that the type of weapon that he had information about was a Davis .380?

A Yes, ma'am.

Q All right. What happened next?

A So, now, at this point he agrees to meet me on Bob Wallace at Sonic.

Q And what was the plan to be?

A Well, he picked the location, he said that just to sit in the lot, you know, at the Sonic there on Bob Wallace. You pull up to the speakers to order, you don't have to go inside. And he said just meet him there. So I pulled up to one of the island speakers and I think I ordered something, and approximately five minutes later a black male approached the vehicle, and he asked me if I was Investigator Renfroe. I told him I was, and he had a seat in the car with me.

Q Did you have a conversation there in your car at the Sonic?

A Yes, ma'am.

Q Tell us what you talked about.

A We talked about this incident, we talked about several things, this incident in particular.

Q All right. As it relates to this particular incident, tell me what you talked to him about.

A He, again, wanted to know what kind of weapon was used, and I believe I asked him why it was so important. He said, well, that he knew a subject that was -- that he thought was -- might be involved in this incident and that he had a .380 pistol. I asked him what the guy's name was, and he identified him as Derrick Mason. I asked him why he thought he was involved, and he said that, "The subject is out of control," and he was trying to make a name for himself and that he was involved in this homicide.

Q Okay. The subject you are talking to there at the Sonic tells you that he believes Mason is out of control and trying to make a name for himself; is that correct?

A Yes, ma'am.

Q Did you have any further conversation about this particular incident there in the Sonic

parking lot?

A I asked him if he knew his whereabouts, where he worked and he said, "No." He said that he understood that he might be a student at Oakwood College and that, again, he wasn't aware of a residence here in town.

Q Did you promise the person giving you this information any type of reward? Did you give him any money, did you give him anything at all?

A No, ma'am. Now, he did receive money later that was offered by the store, a reward that they had issued. And I say he received money. I put him in contact some days later, I think maybe three weeks later, with people in Houston, Texas.

Q All right. Let's just talk about that, now. On this particular date when he approached you, did he approach you and say anything about, "I'll give you information if you give me a reward"?

A No, ma'am.

Q He prefaced nothing on the basis of any type of money or incentive?

A No.

Q Now, at some later point in time you

of vehicle he would probably be driving?

A Yes, ma'am.

Q What was that?

A It was -- the only thing I have noted in my report is a truck. But it was -- at the time we had all the information, we had the tag number and description of the vehicle.

Q You just recall it being a truck?

A Right. That is all I have noted in my report, is a truck.

Q Prior to March the 29th, 1994, did you know this defendant?

A No, ma'am.

Q Had you ever heard of this defendant?

A No, ma'am.

Q Prior to March 1994, did you know Barrington Dames?

A No, I didn't.

Q Had you ever heard of Barrington Dames?

A No.

Q Is Barrington Dames the subject you met at the site?

A No, ma'am.

Q Now, on March 29th, that Tuesday, did

you also have some conversation with SR or the SWAT team officers, Goings, Robinson, Plemons and Allen?

A Well, prior to talking to them, I had contacted the subject again, that I had talked with at the Sonic. And we weren't able to locate Derrick. And he said that there was an address off University Drive, apartments that they all frequent. And he said, "And this is just about a daily basis." And he said that more than likely he would be there sometime during that afternoon or evening.

Q And that was somewhere off of University Drive?

A Right. In University Park Place, in that area where the UAH housing is at this time, some of it.

Q And, to your knowledge, did the SWAT team and several other officers set up a surveillance in that area?

A We contacted SR, their supervisor, and advised them of the subject vehicle, possible location that he might be seen at later on, and those officers, along with homicide investigators,

went to the University Drive area and set up a perimeter, if you will. And I remained at the CID office waiting for a call from this subject, because if the guy shows up, then he is going to call me and let me know.

Q Okay. And at some point in time did you receive information that the defendant had been stopped off of University Drive?

A Yes, ma'am.

Q Now, were you out there at the Hardee's parking lot?

A No.

Q Where were you?

A I was at the office.

Q Okay. When was the first time that you saw the defendant?

A It was around 10:30 p.m., SR -- and I forget which, seems like I saw Plemons -- but they escorted Derrick into the CID division. And when they got him up there, I advised them to take him to -- at that time it was an interview room, but at this point in time it's Investigator Brantley's Office. And he was taken into the interview room, to start with.

of felony murder, the elements of felony murder, the element of intent was not included. So to convict, the State must prove beyond a reasonable doubt each of the following elements of felony murder: One, that Angela Michele Cagle is dead. Two, that the defendant, Derrick O'Neal Mason, caused the death of Angela Michele Cagle by shooting her with a pistol. Number three, that in committing the act which caused the death of Angela Michele Cagle the defendant was acting in the course of and in furtherance of or in the immediate flight from the crime of robbery in any degree. And that in doing that act, which constituted the commission or attempted commission of the robbery, during the course of which or in the furtherance of which or in the immediate flight from which the death of Angela Michele Cagle was caused by Derrick O'Neal Mason.

Again, it's the same, in essence, but without the intent, as what I have described as capital murder.

Once again, a person commits the crime of robbery in the first degree, which is an element of felony murder, if in the course of committing or

again. To convict, the State must prove beyond a reasonable doubt each of the following elements of manslaughter: Number one, that Angela Michele Cagle is dead. Number two, that the defendant, Derrick O'Neal Mason, recklessly caused the death of Angela Michele Cagle by shooting her with a pistol. A person acts recklessly with respect to a result or to a circumstance, when he is aware of and consciously disregards a substantial or unjustifiable risk that the result will occur or that the circumstance exists. Let me read that again since I misstated one word. A person acts recklessly with respect to a result or to a circumstance when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. The person who creates a risk but is unaware thereof, solely by reason of voluntary intoxication, acts recklessly with respect thereto.

are with that other person or persons. Only discuss this case when the 12 of you are in that jury room at one time. And I mean, to be literal about it, if someone has to excuse themselves to go to the restroom and the 11 of you are sitting there, wait until the 12th comes back before you deliberate. I think you understand that clearly and I appreciate your cooperation.

Now, if you will, go through into the jury room and maybe on over to the other one, and we will send the exhibits in shortly.

(Whereupon, the jury was sent to the jury room and the following occurred out of the hearing and presence of the jury:)

THE COURT: Anything from the State on the instructions?

MS. HALL: Judge, yes, sir. At the end of your manslaughter charge, you made a statement of law and it was rather rapid, and I wasn't able to hear exactly what it was. Could I ask you to repeat that?

THE COURT: On manslaughter?

MS. HALL: Yes, sir.

THE COURT: About voluntary

intoxication?

MS. HALL: Yes, sir.

THE COURT: I stated a person who creates a risk, but is unaware thereof solely by reason of voluntary intoxication, acts recklessly with respect thereto. And that's out of the --

MS. HALL: Yes, sir, Judge. Voluntary intoxication is not a defense to manslaughter, and we have a case that cites that. And that was somewhat confusing.

THE COURT: I wasn't giving it to them as a defense. I was explaining it to them, that that could -- they create a risk -- a person creates a risk, but is unaware thereof solely by reason of voluntary intoxication, thereby acts recklessly. In other words, his voluntary intoxication is not a defense, it is a circumstance which creates his reckless act.

MS. HALL: Okay. Just one minute, please, sir.

(Brief pause.)

MS. HALL: We don't have any objections.

THE COURT: All right. Anything from the defense?

Q Who is your oldest child?

A Marcus Mason.

Q when was Marcus born?

A He was born February '73, 11th.

Q Had you and your husband then been married several years prior to his birth?

A Yes, four.

Q Did you anticipate and plan on Marcus's birth?

A Yes, we planned that pregnancy.

Q Okay. How old was Marcus when you found out you were pregnant with Derrick?

A He was about, I guess, maybe 13 months old.

Q What was your reaction to finding out that you were pregnant?

A I was devastated because I was pregnant.

Q Why were you devastated?

A Well, I had one child in diapers and I was having another child. You know, my mother wasn't here to help me and I didn't have anybody helping me, and it was a trying time for me at that time.

Q If you would, describe your emotions

during your pregnancy?

A Well, during my pregnancy I didn't want to be pregnant, and I was kind of mean and didn't like my husband at the time I was pregnant, because I didn't want to be pregnant with Derrick, the baby I was carrying.

Q And Derrick was born in August; is that correct?

A Yes.

Q What was your reaction to Derrick's birth?

A Well, I didn't want him when he was born. I didn't want a pregnancy that long, because I hadn't enjoyed the child that I planned, and then I was pregnant with Derrick. I didn't want to take him home.

Q How do you feel like this affected you as being a mother for Derrick?

A Because he never did thought he belonged, you know, the same as Marcus. He was always a problem.

Q Did he ever express that to you, that he didn't feel like he belonged?

A All the time. All the time, you know.

Q What was the first year of Derrick's life like?

A Well, from the time I brought him from the hospital he cried every day, every night. He was just an aggravating child.

Q Did this have an impact on you with your husband and your other child?

A Well, yes, it did, because when he was six months old I had to go in the hospital with bleeding ulcers, and, you know, at the time it was just -- I was trying to work, you know, and it was really bad.

Q How did Derrick's development differ from Marcus's development as an infant and as a toddler?

A Well, Marcus was a fast child, Derrick was always a slow child. And as -- you know, it took him longer to learn. He never went through his baby stages, he went from, you know, like trying to pull up, he never hardly crawled.

Q How was Derrick's behavior compared to Marcus's behavior as an infant?

A Well, Marcus's behavior, he was gentle. Derrick was aggravating. He would always try to

A Oakwood Academy, Huntsville
Achievement, Davis Hills, back to Oakwood, then I
took him out and tried to home school him.

Q Did you ever have Derrick tested for any
type of learning disability?

A Yes, he was tested for dyslexia.

Q Was it determined that he was dyslexic?

A Yes.

Q What was his reaction, if you remember,
to learning that?

A He never wanted to be different than any
other children in the classroom, you know. All the
time he would want to be up before the class, but
he didn't have the attention span and he always
caused interruption in the classrooms, you know.
And we would have to give him medication, and he
would sleep, he never could do well in school,
never could.

Q Was it ever determined that he had any
type of attention deficit, any type of disorder of
that type?

A Well, he was under a child psychologist
down -- right down the street here at the clinic.

Q Who was that?

A Dr. Fleming.

Q And when was the determination made that he needed any type of help or any type of medication?

A Oh, I guess he was about maybe nine or ten when they started prescribing it for him.

Q Do you know what the determination was that was made?

A Because he also disturbed the class, the learning was -- disability was so bad, I had to try to get him down to the Huntsville Achievement School where they specialize in children who have problems.

Q What was he prescribed?

A Ritalin.

Q Do you know what dosage he was originally prescribed?

A I'm not sure.

Q How long did Derrick take Ritalin?

A About four years.

Q All right. When did he quit taking Ritalin?

A About 15 years old, I think 15 or 16. Going on the 16th year he got so he didn't want to

take it.

Q Did you notice any change in his behavior when he started taking this medication?

A Well, it seemed to sort of work in the classroom but it didn't calm him down enough, we still would have complaints from school.

Q How did Derrick's father react to his behavior problems?

A Well, he would punish him a lot. He didn't understand that he had a problem at the time. And I knew that there was a problem but I didn't know exactly -- we didn't know how to address it.

Q Were there any specific incidents that you could remember that you felt like his father may be over-punished or overreacted?

A Well, we were at a basketball game one night, and Derrick was young at that age and a little squabble started on the stage, and my husband whipped him right there.

Q In front of his friends?

A In front of everybody.

Q In front of everyone in the auditorium?

A Yes.

Q How old was Derrick at that time?

A Maybe 10 or 11.

Q Was there any occasion in which Derrick was abused by anyone or assaulted by anyone during his childhood?

A Yes. He was sexually assaulted by a teenage man.

Q How old was he at the time?

A Seven years old.

Q What were the circumstances?

A Well, the babysitter that I had babysitting him, had a teenage son, and he lured my son into the woods behind his house.

Q What type of -- or what changes did you notice in your child at that time?

A He became withdrawn, more -- not violent, but mean, to the point he wouldn't let anybody touch him, you know, things like that.

Q After that time, do you recall whether or not he had memories of the event or flashbacks of the event?

A Yes, he does. He still do.

Q How often?

A I would say maybe every three or four

months or something like that.

Q What happens when he has those flashbacks?

A Well, it's sort of like -- it's sort of like rage on the person who did it to him. It was a friend and, you know, he think about finding him, you know, since he was so much larger than he was when he took -- lured him to the woods.

Q Was anyone prosecuted?

A No, I didn't know it. Derrick didn't tell me until he was 19 years old.

Q Did you have any specific problems with Derrick while he was a teenager?

A Yes. Sort of like behavior problems, like he wanted to be like everybody else, and he would be called dumb and stuff, and he would just kind of go in rages about that.

Q Did he ever indicate to you that he felt like he was different than other children or other teenagers?

A He always said he was different than others.

Q Did he ever indicate to you that he felt like he didn't belong with other teenagers?

A Yes, because he could not think like they could. I mean, he was very slow.

Q Did he ever indicate to you that he didn't feel like he belonged in his family?

A Yes, he did, because Marcus is an aggressive child and, you know, he had good grades in school, and he always tried to compare himself with my first child.

Q How did Derrick do academically in junior high and high school?

A Not good. Not good all the way through. His records can be checked.

Q When was he removed from high school?

A He was going on in the tenth grade, I saw that it wasn't doing him any good, and I didn't want him to get in any trouble, he couldn't listen. And at that time he was taking Ritalin and it began to make him sick. And, you know, as the teachers would be teaching, he would be hitting on the desk with pencils, things like that.

Q Did you ever notice any effects from the Ritalin?

A He got worse when it came to behavior problems. He gained a lot of weight. You know, he

Q Is he easily influenced by other people?

A Yes.

Q Mrs. Mason, you understand that we are here this afternoon to determine whether or not your son goes to the electric chair?

A Yes.

Q Is there anything that you would like to convey to this jury on his behalf, on your behalf, and on behalf of your family, any reason why you feel like his life should be spared?

A Yes, I do to the jury. As Derrick's mother, he didn't have the mind and he was emotionally unstable and he still is, that he needs help. And that if he is left alive that he can get the help in order to make the right decisions. He never knew how to make decisions and the consequences of those decisions.

Q Have you and your husband done the best you could do with Derrick?

A The best we could.

MS. FERGUSON: Ms. Hall may have some questions for you.

MS. HALL: We don't have any questions, Your Honor.

Q Now, you have heard the testimony of your wife concerning the problems that you had with Derrick when he was growing up?

A Right.

Q Were you in the home very much when Derrick was a child?

A Probably not as much as I wanted to be, because during this time was still in the early stages of our business, and I was out a lot working, but I was there.

Q Were you able to spend very much time with your two children?

A Yes. We did the family things, we went on picnics and went to church, but, again, I'm looking back. At the time I probably thought it was enough time, but looking back I would say it's not as much time as maybe it should have been. I was out working late at night and all that kind of stuff.

Q If you would, convey to the jury the differences in dealing with your two children as far as how they acted and how you reacted.

A Marcus, our first son, was very easy to father. Probably gave him two or three whippings

in his life. On the other hand, Derrick was very aggressive and I had to whip him all the time. I spent a lot of time disciplining Derrick, almost to the point I didn't have time to love him because I was disciplining him so much. So I spent a lot of time disciplining Derrick. My religious faith, we believe in praying with a child before you administer punishment, so I remember praying with Derrick. We would get on our knees before we would administer the punishment, and I would pray, and I would have him to pray. And I remember Derrick -- you know, not being intellectually -- I mean, grasping numbers and things of that nature, but when it come to common sense, he was very quick. So Derrick would pray for a long time, because he knew when the prayer ended he was going to be administered punishment. A lot of time I would have to stop him and I would have to say, "Look, Derrick, it's time to stop praying and time to get the punishment." So we spent a lot of time that way.

Q Did Derrick ever indicate to you that he felt like he just didn't belong?

A Maybe not so much as to voice it, but his

attitude indicated that. Ironically, my name is Moses Mason, my wife's name is Maggie Mason, and we named our first son Marcus Mason, all with M.M. We named Derrick Derrick Mason, which is D.M., and that set him apart. He figured why didn't y'all give me an M.M. So that, along with the other things, seemed to have an effect on him.

Q Was Derrick -- let me strike that.

Was learning that your wife was pregnant with a second child a surprise to you?

A Yes, but it didn't affect me like it did my wife, because she was the one that had to carry the child.

Q How did she react?

A Oh, very bad. I mean, she was -- all during the pregnancy she was grumpy, evil, what have you, just didn't want to be pregnant.

Q How did she react upon Derrick's birth?

A Well, of course, she loved the child, but it burdened her down, having two children in diapers, and it burdened her down. And Derrick, from a very early age, I remember him being very, very aggressive, very hard to discipline, just real hard to parent, I mean, from a baby. Cried

all the time, he was just that kind of child.

Q You heard your wife talk also about his crying. Is it true that he cried day and night for the first year?

A Day and night, yeah. He cried all the time.

Q How did you and your wife react to that?

A Well, we reacted differently. I probably reacted a little harder, I just threw my hands up. You know, my wife, she tried to deal with it. She tried to love him, you know, do whatever mothers do. But I probably reacted differently. I just threw my hands up. I didn't know what to do.

Q Now, you heard the incident that your wife spoke of, where you spanked Derrick in front of the auditorium full of people. Do you recall that incident?

A Yes, I do.

Q Were there any other times that you feel like that you may have inappropriately disciplined Derrick?

A Looking back -- well, I guess from -- from the way I believe, I don't consider it

and I saw him on Monday.

Q If you could, describe for the jury how he was acting at that time.

A Looking back, I just remember him acting withdrawn, very much withdrawn. Very much -- best way to explain it, out of it, very much out of it, withdrawn and nervous. That's the best way I can explain it.

Q Mr. Mason, do you feel like you and your wife have done everything you can to provide Derrick with a good, wholesome family growing up and with the things he needed?

A Yes, I believe we did. Of course, you always look back and see things maybe you could have done differently. But with the knowledge that we had, the money we had, position we were in, I think we did everything we could. Of course, you know, Derrick, like I said -- as Maggie indicated earlier, we had him in many schools and he got into trouble in different schools. We would have to take him out, put him in another one. The juvenile system was involved at one time. And I have spoken to some of the juvenile authorities concerning Derrick, in need of getting him tested, because I

could see that Derrick had dual personalities.

Q What do you mean by him having "dual personalities"?

A Well, as most people that know Derrick, was totally shocked, totally shocked out of their mind at what had happened. They said, "I can't believe this." You know, "He is so nice." And I saw both sides, I saw the nice side and I saw the uncontrolled, aggressive side because I lived with him. And I related this personality problem to some juvenile officials here in the City of Huntsville, more than one time, and told them the need of doing something, that we couldn't do anything else, but there was a need of something taking place here. But nothing -- you know, nothing ever happened as a result of it.

Q Do you feel like you did all you could.

A Yes, I feel we did all we could do.

Q Do you understand we are here today to determine what the punishment is for the offense Derrick has been convicted of today?

A Yes.

Q Is there anything you would like to say to the jury as to why you believe that life without

were arrested?

A I have been in jail about a year and three months now, and there's not a day that goes by that I don't wake up and think about it.

Q Do you understand, though, what you put the mother through?

A Even more so now that I have seen her here in court, even more so.

Q Do you have remorse for that?

A Great. Great remorse. I haven't had a chance to really express a whole lot of feelings because, you know, in jail you don't really talk to people about your case, but the remorse is -- you know, is overwhelming at times. I have wrote letters, even our group discussions upstairs in the jail, the part that I can convey to fellow inmates, I do. And the part that always overwhelms me is when I come to the part talking about Ms. Cagle's mother. Because I realize how close I am with my own mother.

Q Derrick, would you change what you did on that day if you could?

MR. MORGAN: Judge, I'm going to object.

THE COURT: Sustained.

decided for you, basically, to serve life imprisonment without parole, do you think you could contribute in the penitentiary?

MR. MORGAN: Judge, I'm going to object to that. I don't know where he is going with it, but if he wants to ask something that pertains to mitigation, that will help this jury in deciding or making their decision on what recommendation they are going to make, fine. But it doesn't look like we are getting into mitigation. It's all self-serving.

THE COURT: I sustain as to that question.

Q Derrick, do you believe anything that's happened, either in your childhood or throughout your life, in some way could affect the mitigation in this case?

MR. MORGAN: Judge, I object to what he might think, the form of the question.

THE COURT: You can have him state facts but not what he thinks or what his opinions are.

Q Derrick, what events in your life do you think could mitigate this -- what's happened in this case?

A Okay.

THE COURT: I'm sorry. You can ask him what he thinks mitigates as far as punishment but not what happened that day.

MR. FERGUSON: Well -- oh, okay. I'm sorry.

THE COURT: I guess they were getting ready to object. I don't think the question is in proper form. Restate it.

MR. FERGUSON: It was improper.

Q Derrick, have different things in your childhood caused you emotional problems, emotional harm?

A Yes.

Q Did you always feel like you were basically the person in the family that just didn't fit in?

A Not only did I feel that way, I saw it that way and I tried to change it. Never been successful.

Q Did you ever -- let me strike that. Did the Ritalin in any way make it easier?

A It's documented that I took Ritalin.

A Okay.

THE COURT: I'm sorry. You can ask him what he thinks mitigates as far as punishment but not what happened that day.

MR. FERGUSON: Well -- oh, okay. I'm sorry.

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I -- it's been such a traumatic childhood, that I recall taking so many medicines, I can't remember which one was Ritalin. I remember taking medicines that would put me to sleep, supposed to calm me down, help me act right in the classroom. Teachers saying, "Derrick, you are on medicine, you are still acting up," things of that nature.

Q Did you have problems coping daily in school?

A I can't hear you.

Q Did you have problems daily coping in school?

A Daily. I'm sitting here trying to remember. There's other things besides fights, but there was not a day that went by I didn't get into a fight.

Q Derrick, do you remember who disciplined you when you were growing up?

A Sure. Sure. Yes.

Q Who was that?

A My father.

Q How did he discipline you?

A You mean what things --

Q How did he do it?

for this crime; is that correct?

A Are you asking me if I'm asking for mercy?

Q Right.

A That would be -- that would be a request, mercy, yes.

Q On the early morning hours of March 27, 1994, did Angela Cagle ask for mercy or beg for her life before you took it?

A Well, Mr. Morgan, to be honest with you, I don't remember the details of that crime. I can't sit here and honestly tell you she did or she didn't, because I honestly don't remember anything.

Q You told Bud Parker that she cried. Do you remember saying that?

A The statement that I gave Bud Parker, something new came out at different hearings, and I don't recall or have a recollection of that interview, that statement. The only person I remember even talking to that night, and I remember him by his face, is the guy that was here yesterday or the day before yesterday with the --

Q So you don't remember requesting Bud

Parker to interview you and to talk to you and take a statement from you?

A I don't have a recollection.

Q If you don't remember what you said to Bud Parker, do you remember Angela Crying when you had her back there in the back room, had her taking her clothes off and holding the gun on her, threatening to kill her if she didn't unplug the camera?

A Okay. I think this question here requires the same answer as your first one. I don't recall especially any details.

Q Okay.

A Or any --

Q You are not telling us that didn't happen, you are telling us now you don't recall it?

A I'm telling you now I don't -- you know, it's scattered, probably should have been answered beyond truth.

Q You don't remember doing any of the things that Bud Parker said that you told him about in the statement that he took from you, don't have a recollection of any of that?

A Say that one more time.

Q You heard Bud Parker testify. You heard Bud Parker testify that he took a statement from you, very detailed?

A Yes, I heard him testify yesterday.

Q And today do you not remember any of those details the way you told Bud Parker on that occasion?

A Mr. Morgan, I don't even remember an interview with Mr. Parker.

Q Okay.

A The interview that I can recall, which is sketchy, is with --

Q One of the other detectives?

A Yes, and it was about --

MR. FERGUSON: I think we are going to object on this line, that he is going where he is going with it.

THE COURT: Overruled. I think he has answered. Ask your next question.

Q Do you remember anything about the interview?

A Like I just said, I remember little sketches of an interview of -- I can't remember the fellow's name, the mustache guy.

involvement in this case, or just a spectator. So please, again, respect the wishes of the jury in that regard.

And then after I have discharged you from this courtroom, you are free to go, of course, but I would ask that within a reasonable time you vacate the building so that we can shut down for the night and so we can get the jury escorted to where they need to be, respectively. And I would appreciate your cooperation in that regard.

All right. You may bring the jury in.

(Whereupon, the jury was placed in the jury box and the following occurred:)

THE COURT: Ladies and gentlemen of the jury, I have been informed that you have reached a decision for your recommendation in this case. Is that true?

A JUROR: That's true.

THE COURT: Who has that document? Yes, sir, if you would, stand and read it, please.

A JUROR: "We, the jury, recommend that the defendant, Derrick O'Neal Mason, be punished by death."

THE COURT: And what is the number?

A JUROR: 10 and 2.

THE COURT: State it, if you would.

A JUROR: 10 votes for the recommendation, 2 votes against the recommendation.

THE COURT: And is that the accurate verdict of each of the members of the jury? If it is not, would you please signify.

(No response.)

THE COURT: All right, sir. If you will, pass that to the deputy.

Ladies and gentlemen, this concludes what I know has been a difficult time for you, starting Monday. I appreciate your service to your community. I know there is no way I can say how much I appreciate the dedication you put into this. You have been attentive, you have listened carefully to everything presented. And I thank you on behalf of all concerned for your participation and your dedication to this process.

What I'm going to do is let you go now to this jury room, then back to where you were. And when it is appropriate time for you to leave, we will notify you so that we can get you where you

EXHIBIT B

for approximately six hours. During the evaluation Mr. Mason was alert, cooperative, attentive and interactive. A copy of my September 6, 2011 Report is attached as Exhibit 2.

4. Cognitively Mr. Mason's memory appears to be well intact. His immediate, recent and remote memories are all within normal limits of certainty when asked about his 1994 crime. There were some lapses in memory because at the time of Angela Cagle's murder Mr. Mason was under the influence of alcohol and had smoked marijuana laced with embalming fluid.

5. Mr. Mason's current range of knowledge and general judgment abilities all appeared to be adequate at this time and his general intellect appeared to be low normal. During the examination he expressed remorse over what happened during the crime and the way he lived his life prior to his incarceration.

6. Mr. Mason's records indicate that he had serious difficulties in school. He struggled with Attention Deficit Hyperactivity Disorder (ADHD) and had learning and behavioral problems throughout elementary school. As a result he received special programming and was prescribed Ritalin. The Ritalin caused Mr. Mason to be fatigued. To avoid this, he did not take the medication on a regular basis as prescribed.

7. Mr. Mason also appears to have been prone to antisocial behavior. According to Mr. Mason he grew up feeling like he did not belong. He reported feeling unwanted by his mother and eclipsed by his older brother's success.

8. Mr. Mason indicated that he had a long history of alcohol and substance abuse. Beginning at age fifteen he began to experiment with street drugs, including but not limited to marijuana, and on occasion LSD.

9. As part of my clinical assessment I conducted three of the most reliable forensic tests to determine Mr. Mason's psychological profile. These included the Rorschach test, the Minnesota Multiphasic Personality Inventory Second Edition test (MMPI-II), and the Millon Clinical Multiaxial Inventory (MCMI-III) test.

10. The results of the Rorschach test suggest that Mr. Mason is a rigid individual who does not use his resources to his advantage. He has trouble seeing detail, jumps to conclusions and views things in an all-or-nothing fashion. Overall his demeanor is classified as more reactive than reflective.

11. The results of the MMPI-II and the MCM-III tests lead me to conclude that Mr. Mason's general personality profile is one of an individual who shows a multitude of confusing thoughts and antisocial features. These tests confirm that Mr. Mason has had difficulties liking himself and believed he was inferior and defective. His sense of inferiority propelled him to engage in borderline and blatant antisocial behavior. In my experience this type of inferiority complex lends itself to substance abuse as a means of escaping everyday life and responsibilities. The use of alcohol and drugs may have altered Mr. Mason's thought processes causing him to not think clearly and interfering with his judgment and decision making.

13. According to Mr. Mason, on the night of the crime he was under the influence of alcohol and marijuana laced with embalming fluid. Embalming fluid mimics phencyclidine (PCP), which is a synthetic dissociative drug that can lead to feelings of detachment from both self and body. This can cause delusions, agitation and distortion of body senses. These symptoms are consistent with what Mr. Mason indicates he experienced prior to committing his crime. Mr. Mason indicated that he was "tripping" or experiencing hallucinations that he had never felt before. He recalls being in a trance-like state and having an out of body experience

where he felt totally detached, confused, and agitated. Mr. Mason cannot recall how he got into his car after committing the crime and indicated that he felt severe confusion while driving.

14. Based on Mr. Mason's statements and his general psychological profile, it appears he committed this crime on an impulsive whim. His feelings of alienation and the effects of the drugs and alcohol were a major factor that caused him to act in a violent manner. His severely intoxicated state affected his ability to control his actions.

15. Based on my examination of Mr. Mason and my review of his case file, I would concur with the October 6, 1994 report of the State's Forensic Examiner, Dr. Lawrence Maier where he indicates that Mr. Mason may have been hyper vigilant and incapable of adequate perception based on either external stimuli or intoxication with alcohol and marijuana. The results of my examination are consistent with Dr. Maier's findings that Mr. Mason's judgment was impaired at the time of the crime due to Mr. Mason's drug altered emotional and cognitive state combined with his long standing personality disorder, impulsivity and poor emotional control. I agree with Dr. Maier's conclusion that Mr. Mason's drug intoxication may have led to a drug induced psychosis. The State Forensic Report dated October 6, 1994 is attached as Exhibit 3.

16. In my professional opinion, Mr. Mason appears to have been highly intoxicated at the time he committed his crime. He has a long history of polysubstance abuse and a psychological history of inferiority that made him very vulnerable to exercising poor judgment and engaging in irresponsible and impulsive behavior. Mr. Mason's use of hallucinogens and other drugs in combination with a predisposed belief of negativity towards himself and low self-esteem resulted in problems controlling his behavior. Mr. Mason's prolonged substance abuse

coupled with his preexisting feelings of inadequacy and antisocial features were prominent mitigating factors in the murder of Ms. Cagle.



Robert A. DeFrancisco, PhD, ABMP

Subscribed and sworn to before me
on this 14 day of September 2011.

Wanda Bontoro Wading
Notary Public

MY COMMISSION EXPIRES
09-25-2012

Exhibit 1

VITA

Name: Robert Anthony DeFrancisco

Home Address: 412 Belleville Avenue
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Marital Status: Married

Date of Birth: 01/04/49

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Degrees, Honors

B.A. 1970, Psychology; Clemson University, Clemson, S.C.

M.A. 1971, Psychology; University of Southern Mississippi,
Hattiesburg, Mississippi

Ph.D. 1974, General Psychology (Clinical emphasis), University of
Southern Mississippi, Hattiesburg, Mississippi

M.A. 2006, Psychopharmacology, Neuroscience Institute,
Carlsbad, California

Master Certification: September 2008, International College of Professional Psychology

Medical Psychologist: Academy of Medical Psychology, 2009

Board Certification, Medical Psychology: American Board of Medical Psychology, August 2010

Externship: Ellisville State School/Hospital, Ellisville, Mississippi 1972-1973

Internship: Post Doctoral Internship: Clinical Psychology; University of Kentucky Medical School, Albert B. Chandler Medical Center, Lexington, Kentucky, August 1977- August 1978

Diplomate: Fellow Psychopharmacology: Prescribing Psychologist Register
December 2005

Elected Laboratory Assistant, Clemson University 1969

Graduated Cum Laude, Clemson University

Awarded graduate fellowship at University of Southern Mississippi, 1971-1973

Professional Affiliations, Certifications

- Certified Clinical Psychometrist, State of Alabama, 1972
- Member, American Psychological Association (APA), 1974
(a) Member, Division 55 Advancement of Psychopharmacology
- Member, Alabama Psychological Association (APA), 1974
- Licensed Clinical Psychologist, State of Alabama, 1976
- Certified/Approved Psychologist by the Council for the National Register of Health Service Providers in Psychology, 1978
- Fellow, American College of Psychology, 1985
- Member, Association for the Advancement of Psychology, 1989
- Diplomate, American Board of Professional Disability Consultants, 1990
- Diplomate, in the following areas awarded by the International Academy of Behavioral Medicine and Psychotherapy, 1992
 - Chemical Dependency Psychotherapy
 - Behavior Medicine
 - Professional Psychotherapy
- Diplomate, American Association of Family Therapists, 1992
- Certified Forensic Examiner, State of Alabama, Department of Mental Health, 1993

- Member, The American College of Forensic Examiners, 1995
- Diplomate, Board Certified Forensic Examiner- Primary Division: Psychology, by the American Board of Forensic Examiners, 1996
- Diplomate, Forensic Clinical Psychology, The American Board of Psychological Specialties, 1997
- Distinguished Alumni Fellow, Clemson University, Department of Behavioral Science, 2001
- Diplomate, American Board of Psychology, 2010

Appointments

1. Teaching Assistant in Psychology at the University of Southern Mississippi, 1972-1973
2. January 1974-August 1974: Adjunct Professor of Psychology, Livingston University, Livingston, Alabama. Taught graduate classes in Behavior Modification and Child Development.
3. September 1975-August 1977; December 1978-1979: Adjunct Professor of Psychology, Troy State University, Bay Minette, Alabama. Taught graduate courses in Theories of Psychotherapy, Behavior Pathology, Group Psychotherapy, Wechsler Scales, Stanford-Binet Scales and Psychotherapeutic Rehabilitation.
4. September 1978-Present: Adjunct Professor of Psychology, Jefferson Davis State Junior college, Brewton, Alabama.
5. Clinical Psychology Consultant, Gulf Coast Hospital, Ft. Walton Beach, Florida, 1982-1986.
6. Clinical Psychology Consultant, Charter Hospital of Mobile, Alabama, 1987-1991
7. Clinical Psychology Consultant, Rivendell Hospital, Panama City Beach, Florida, 1993-1995.
8. Clinical Director, Center for Clear Thinking: An Alcohol-Drug Rehabilitation Outpatient Center, 1994-1995.
9. Appointed Clinical Psychology Advisor for the American Board of Professional Disability Consultants. Duties include monthly review of reports by professionals, (work samples) to determine their eligibility for Diplomate Status, June 1995.
10. Clinical Psychology Consultant, Southwest Alabama Mental Health Center, Monroeville, Alabama 1978-Present.
11. Clinical-Forensic Psychology Consultant, D.W. McMillan Memorial Hospital, Brewton, Alabama, 1978-Present.
12. Clinical Pharmacology/Psychologist Consultant, Englewood Nursing Home, Monroeville, Alabama, 2002
13. Clinical Pharmacology/Psychologist Consultant, Westgate Village Nursing Home, Brewton, Alabama, 2000; Greenville Nursing Home, Greenville, Alabama; Atmore Nursing Home, Atmore, Alabama.
14. Clinical Pharmacology/Psychologist Consultant, Crowne Nursing Home, Greenville, Alabama, 2002.
15. Clinical Pharmacology/Psychologist Consultant, Atmore Community Hospital, Atmore, Alabama, 2009.

Experience

1. September 1973-August 1977: Senior Psychologist, Southwest Alabama Mental Health Center. From September 1976-August 1977 Director of Clinical Services. Duties were wide ranged, including: extensive experience with conducting psychotherapy with children, adolescents, and adults; intellectual and personality assessments; consultations with school personnel; law enforcement and other health related agencies; supervision of masters level mental health professionals; Administration experience and experience in mental status evaluations.
2. Have given numerous workshops for professionals, including psychologist, physicians and law enforcement on topics such as ADHD, Forensic issues, Emotional well-being and Parenting to name a few. These workshops have been sponsored by such organizations as Rivendell Psychiatric Hospital, University of South Alabama Medical School and Charter Hospital of Mobile.
3. Since 1978 I have conducted in excess of 5,000 intellectual/psychological evaluations for the Brewton City Schools, Brewton, Alabama.
4. Since 1993 as a Forensic Psychologist I have conducted over 1500 Forensic Evaluations including, but not limited to, Mental State at the time of the offense, Competency to stand trial, Competency for sentencing, Competency to waive Miranda Rights, custody and sexual abuse allegation evaluations.
5. I have had numerous court appearances for Circuit Court in Escambia/Baldwin Counties and Monroe/Concuh Counties for the purpose of expert witness regarding Forensic Psychiatric Issues. I have also been an expert witness on Forensic Issues in cases out of state.
6. Since September of 1978 I have been in private practice in Clinical Psychology at the Brewton Medical Center in Brewton, Alabama. In 1993, I became Certified and then Board Certified in Forensic Psychology and this expanded my practice.
7. Clinical Psychopharmacological consults/ Psychologist for several nursing homes; including West Gate Village, Brewton, Alabama; Englewood Nursing Home, Monroeville, Alabama; Crowne Nursing Home, Greenville, Alabama; Atmore Nursing Home, Atmore, Alabama.

My Practice includes inpatient hospital consultations and evaluations (children and adults; psychotherapy (individual, marital, and family); psychotherapy evaluations for disability determination, Workman's compensation claims and injuries and vocational rehabilitation clients. Complete Forensic workups for circuit court cases; custody/sex abuse charges, etc. Intellectual/Psychological evaluations for ADHD, LD, Alzheimer's Disease, Dementia, Medication evaluation and recommendation (Psychopharmacology).

Research/Publication

Bruno, R., DeFrancisco, R., and Mehearg, E. The use of Reinforcement Therapy in Modifying and Aggressive Retardate's Behavior. Southern Quarterly Psychology Journal, 9, 1973.

DeFrancisco, R. Toilet Training of Two Profoundly Retarded Females at a State Institution. Unpublished Manuscript, University of Southern Mississippi, 1971.

DeFrancisco, R., The effects of Music playing on the Consumption of Alcohol. Unpublished Manuscript, Clemson University, 1970.

DeFrancisco, R., An MMPI Manual. Unpublished Manuscript, 1978.

DeFrancisco, R., A Pharmacology Manual for Non-Medical Therapists. Unpublished Manuscript, 1978.

DeFrancisco, R., From Clinical Psychologist to Clinical Detective, National Psychologist, October 2003.

DeFrancisco, R., The RxP Movement in Psychology: A Comment. National Psychologists, April 2011.

References

Whittle, William H., M.D.
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535 Jack Warner Pkwy., STE. A-2
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Koch, Daniel L., Ph.D.
Licensed Psychologist
2411 Old Shell Rd.
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Low, Betty Jean, M.D.
Family Physician
Brewton Medical Center
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Exhibit 2

ROBERT A. DEFRANCISCO, PHD, ABMP
Board Certified Clinical-Forensic Psychology
Diplomate Academy Medical Psychology

By Appointment
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Brewton, AL 36427

Forensic Evaluation

Name: Derrick O'Neal Mason
Date of Birth: 08/09/1974
Date of Evaluation: 09/06/2011

Referral:

Derrick O'Neal Mason is a thirty-seven year old African American male who was evaluated at the Holman Prison facility in Atmore, Alabama. He was referred for a forensic evaluation by his attorneys, Baker & Hostetler. The Defendant is on death row and has been charged with Capitol Murder and Robbery. The defense attorneys requested that Mr. Mason undergo an evaluation to determine his State of Mind at the Time of the Crime as well as other significant health issues that could provide mitigating evidence. According to his defense attorneys, his execution date by lethal injection is scheduled for September 22, 2011. The defendant has been incarcerated at the Holman Prison facility since 1995.

Notification:

Prior to the evaluation, the defendant was informed as to the purpose of the evaluation and the limited confidentiality inherent. Specifically, he was told that the results would be submitted in the form of a report to his defense counsel. He was informed that the results of these test findings could be used in court proceedings should the defense counsel choose to do that. He was also informed that there may be testimony by this examiner and a written report formulated to help his

defense counsel concerning his Mental State at the Time of the Offense and also psychological or mitigating factors that may have contributed to this unfortunate tragedy. The defendant indicated that he understood the purpose and the confidentiality of the evaluation and agreed to proceed.

Summary of Alleged Offenses:

According to review of documents submitted by defense counsel, during the early morning hours of March 27, 1994 the defendant, Derrick O'Neal Mason, shot and killed a female convenient store clerk, who at that time was a twenty-five year old Caucasian female named Angela Cagle. The motive for the crime was, according to the defendant, to rob the store in order to support his drug habit. He was subsequently arrested on March 30, 1994. As stated, he has been convicted of the crime and is scheduled to be put to death by lethal injection on September 22, 2011.

Data Sources:

Multiple data sources were reviewed regarding this case. Defense counsel, via attorney Essence Liburd from the firm of Baker & Hostetler sent numerous documents regarding Mr. Derrick O'Neal Mason. There were in excess of 200 pages of documents that were reviewed that included an Outpatient Forensic Evaluation Report by Dr. Lawrence Maier and numerous documentations regarding school records and various documents and evaluations that were completed by a multitude of individuals during his childhood and his adolescence. Witness statements were reviewed as well as police investigation reports, probation officer reports, school reports, etc.

Pertinent Background Data:

As stated, the defendant has been convicted of Capitol Murder and is sentenced to be executed by lethal injection on September 22, 2011. Background data reveals that he was born and raised in Madison County, Alabama and was born on August 9, 1974. He resided in Madison County,

which is in the Huntsville area most of his life, except between 1989-1990 when his family moved to Pulaski, Tennessee. According to Mr. Mason, he is the younger of two children, born to Moscs and Maggie Burton Mason of Pulaski, Tennessee. His parents are still living and are married. He reports a rather strict childhood in which he felt and believed that he could not please his parents. His parents were very religious and committed to the dogma of the Seventh Day Adventist teachings in which no meat was allowed in the house. He always looked up to his older brother, Marcus, who is allegedly a model sibling and an excellent student. Derrick, himself, struggled through school and was diagnosed in earlier years with having Attention Deficit Hyperactivity Disorder (ADHD). This is documented by the forms that I read that were sent to me by defense counsel. He was placed on Ritalin for a number of months, which he took erratically because it made him tired. He completed the 9th grade and then attended Drake Technical School in which he went through a Cosmetology curriculum. At the time of the offense he had worked as a Barber as well as for his father who owned a small carpet business.

Mr. Mason indicates that he has had a long history of alcohol and substance abuse, primarily marijuana, though he has engaged in LSD in the past. During his early years, Mr. Mason indicated that he had difficulty focusing and concentrating and never felt that he could compete with his brother. He had learning and behavioral problems throughout elementary school, sometimes attending some special programming. He was eventually expelled from school at the age of 16, after having completing the 9th grade for continual disruption. As stated, he has been treated with Ritalin in the past and he experimented at early ages, typically 15 or 16, with street drugs, including but not limited to marijuana, occasional LSD and on the night of the murder apparently he had marijuana laced with embalming fluid as well as alcohol.

He had been in constant trouble with the school when he was younger with multiple suspensions. He was convicted of attempted arson in 1989 and given one year probation and community service. In 1991 he had a sexual abuse charge in which he had to perform community service,

attend juvenile sex offender counseling and was placed on probation. He also had a speeding ticket. After he completed the 9th grade he allegedly was homeschooled for a while but that did not go very well.

As stated earlier, his father owned a carpet cleaning business and both his father and mother were involved in that business. From what I can tell regarding the reports that I have read, Derrick received some superficial counseling with a social worker but never received any attentive psychotherapy by a psychiatrist or psychologist.

Clinical Assessment

Mental Status Evaluation:

Mental Status Examination reveals a well built African American male who is somewhat balding. He is dressed in white prison fatigues and he was not handcuffed or shackled at the time of the examination. There were no noticeable tattoos or abrasions that were seen and this individual appeared to be masculine, alert and not sedated. His attitude was cooperative, attentive and interactive. There was no indication of any hostility or passive aggressive mannerisms.

Cognitively, his memory seemed to be well intact. His immediate, recent and remote memories were all within normal limits and certainly when we talked about the circumstances regarding this crime in 1994 he had some episodes where he had difficulty remembering details, not only because of the time that has elapsed, but also because it appears that at the time of the offense he was highly intoxicated with alcohol and marijuana laced with embalming fluid. At any rate, he was oriented x4 to person, place, date, time and situation. His concentration, attention and pace were all within normal limits at the time of the evaluation. The defendant demonstrated no distractibility; his reasoning and comprehension skills appeared to be within normal limits. His fund and range of knowledge and general judgment abilities all appeared to be adequate at this

time and his general intellect appeared to be low normal.

Speech productivity was normal with no indication of poverty of speech and his flow was normal with no indication of hesitancy. His tone was expressive though not loud and was intense at some points but judged to be normal. There was no indication of peculiarities in his tone; that is, there was no perseveration or echolalia.

Thought content was coherent and comprehensible and his speech had no slurring, mumbling or stuttering. His thought structure was logical and sequential and no evidence of tangential or loose association; he did not ramble and tended to be as detailed as he possibly could, he seemed meticulous and thoughtful with his responses.

He demonstrated no current homicidal or suicidal ideation during the examination and expressed remorse over what had happened regarding this terrible incident in 1995. He was not actively hallucinatory or delusional and his non verbal behavior indicated that his activity level was normal and that he had adequate eye contact, mannerisms and gestures. His facial expressions appeared to be candid and bonafide. Again, he seemed remorseful about the crime that had taken place in 1995 as well as how he had lived his life in general prior to his incarceration. He indicated that he now believes he has turned his life around and had found spiritual peace. While he was not looking forward to his death, he did not seem to fear it. His affect was appropriate to his mood and also the situation at hand. There was no evidence of inappropriate affect; range of affect was within normal limits. Hence, Mr. Mason demonstrated appropriate control over his current actions and emotions during the examination.

Results of Psychological Testing:

The Defendant was interviewed for approximately six (6) hours in a room supplied by Holman

Prison. The examination/interview commenced at 9:30am and terminated at 3:30pm. Mr. Mason was talkative and cooperative and there were no problems during the examination. He stands about 6 feet 4 inches tall and weighs about 260-270 pounds. Again, he was dressed in white prison fatigues. He was neat and clean, and he was well shaven and had an adequate appearance. As indicated earlier, Mr. Mason has a significant substance abuse history as well as difficulty getting along in school and being prone to antisocial practices. Prior to the commitment of this crime, he regularly met with several of his friends who used illegal drugs as well as alcohol, almost on a daily basis. Drug of choice was alcohol and marijuana, occasionally LSD and they would smoke marijuana blunts. He has never had treatment for substance abuse and/or any in-depth mental health therapy.

In order to determine the general psychological profile, three (3) of the most reliable forensic instruments in psychological literature were administered. These included the Rorschach, Minnesota Multiphasic Personality Inventory Second Edition (MMPI-II), and the Millon Clinical Multiaxial Inventory (MCMI-III). All of these instruments have been thoroughly researched and are recognized as being able to recognize a person's personality structure and general demeanor.

On the Rorschach, Mr. Mason gave only eight (8) responses, with fifteen (15) to twenty (20) being normal. However, the responses were all popular responses, and showed good reality contact. That is, there was no active psychosis. The paucity of his responses is suggestive of a rather rigid, concrete individual who does not use his resources to his advantage. He tends not to see detail, jumps to conclusions and responds in an all-or-none fashion. That is, Mr. Mason has a tendency to see the world as black Or white rather than as being black And white. There were five (5) block responses to the Rorschach cards in which he saw no design, suggesting poor introspection and lack of insight. Hence, Mr. Mason would be seen as more reactive than reflective with his demeanor.

The MMPI-II and MCMI-III complement one another and are both done in a valid manner. That is, there is no overstating or understating his characteristics. His basic personality profile is one of an individual who shows a multitude of confusing thought and antisocial features. This would tend to make it difficult for him to make sense out of his life and adapt his behavior to life circumstances. He has found it difficult in life to like himself and believed in the earlier years of his life that he was inferior and defective. This sense of inferiority propelled him to engage in borderline and blatant antisocial practices. This general make up of inferiority lends itself to substance abuse as a means of escape from everyday life and responsibilities. In other words, Mr. Mason generally disliked himself and saw himself as a misfit. Certainly the use of alcohol and drugs can alter his thought processes where he does not think clearly and therefore it interferes with his judgment and decision making.

Mr. Mason's life has been one that he concluded at an early age was negative and unproductive. He therefore associated with individuals who likewise, had dissatisfied attitudes towards other people and society and therefore he became rebellious much like they did. His bold, self indulgent behaviors were to provide a sense of false security as well as power. That is, Mr. Mason's disdain for himself would not allow him to feel any sense of success, therefore violent and reckless behavior became more prominent and once substance abuse was factored in, they became both a cause and effect of his antisocial personality features and unusual ways of thinking.

From a cognitive perspective, his sense of inferiority affected how he viewed discipline. Instead of seeing discipline as a way of correcting his negative behavior, he would view it as evidence of his 'inferiority'. Hence, his recklessness continued and his misunderstandings about life continue to spiral out of control. He could therefore, not feel secure and acted before he thought about the consequences of his actions. So, despite the dissatisfaction with his choices, actions and decisions he was unable to stop himself. These led to antisocial practices and the use of

substance abuse further compounded his negativity towards himself as well as others.

Forensic Assessment:

Mental State at the time of the Offense/Other Forensic Opinions

Section 13A-3-1(a) of the Alabama Criminal Code states that with regard to a mental state defense, 'at the time of the commission of the acts constituting the offense, the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature of the quality or wrongfulness of his acts.'

Mr. Derrick Mason was thoroughly evaluated regarding motivation, timing and memory of the offense leading to the Capitol Murder of Ms. Angela Cagle. This individual has a long history of polysubstance abuse including alcohol, occasional LSD, marijuana and at the time of the offense, marijuana laced with embalming fluid. Mr. Mason believes that the marijuana was laced with embalming fluid because he had never hallucinated in this manner before and was 'tripping like he had never tripped before.' He says that he appeared to almost be in a trance-like state, had an out of body experience and felt totally detached, confused as well as agitated and bizarre. He stated that he would regularly 'meet with these friends' where they would abuse these drugs and had committed one or two robberies in the past with the purpose of supporting their habit. He, unfortunately, because of his lack of self-esteem, associated with people who shared many of his feelings of dismay and poor self-esteem. The State's own Examiner, Dr. Maier, in his report on October 6, 1994 indicates that the defendant may have been hyper vigilant and not capable of adequate perception from either external or internal stimuli because of his intoxication with the substances of alcohol and marijuana. He further states that his judgment was impaired at the time of the crime and this was due to his drug altered emotional and cognitive state in combination with a long standing personality disorder with impulsivity and poor emotional control. Dr. Maier concludes that Mr. Mason was highly intoxicated, although not without the ability to distinguish right from wrong. Since there are no laboratory tests to review and it is the defendant's

conclusion that the marijuana was laced with embalming fluid that he ingested that night, I have to agree with Dr. Maier that this tragic situation was mitigated by probable drug intoxications which may have lead to a drug induced psychosis. The cmbalming fluid actually mimics phencyclidine (PCP), which is a synthetic dissociative drug that can lead to feelings of detachment from both self and environment. This can precipitate delusions, agitation, and distortion of body senses, which this defendant indicates he in fact experienced. He alleges to me that he does not know how he got into his car and indicates severe confusion at the time of his driving. The act was done on an impulsive whim and his feelings of alienation as well as the drug and alcohol intoxication causing him to act in a violent manner and therefore was a major factor in this crime. Hence, at the time of the offense, it appears that the defendant was quite intoxicated with illegal substances that affected his ability to control his actions. Certainly, however, he chose to ingest these drugs and therefore he is responsible for the act himself.

Summary and Conclusion:

On the request of Baker & Hostetler, Mr. Derrick Mason was evaluated to help determine his State of Mind at the Time of the Crime as well as ongoing mental health issues that could provide mitigating factors during the crime. In order to determine this, Mr. Mason was interviewed for an extensive period of time and appropriate psychological testing was employed. Also, multiple documents were reviewed as well as a forensic evaluation conducted by Dr. Lawrence Maier, the State Forensic Examiner, in October of 1994. I agree with Dr. Maier that it was apparent that Mr. Mason was highly intoxicated at the time of the crime. I would also conclude that he has a long history of polysubstance abuse as well as a history of inferiority that made him very vulnerable to exercise poor judgment as well as irresponsible and impulsive behavior. The use of hallucinogens and other drugs in combination with a predisposed belief of negativity of oneself and the environment in general i.e. antisocial features would be a poor combination in controlling his behavior. Hence, there are prominent mitigating factors to this tragic offense.

In my recent interview with Mr. Mason, it now appears that through his own readings and his own incarceration, he has had time to reflect upon this crime. He has now obtained a GED while he has been in prison. There is no question in my mind, that the use of drugs that he ingested the night of the crime as well as a preexisting dislike for himself and antisocial features were strong mitigating factors in this very unfortunate and tragic murder of Ms. Cagle. If Mr. Mason would have received appropriate psychological intervention and therapy, this unfortunate tragedy may have been avoided. I could only ask the Court to reconsider the points that I have outlined in this report and understand that these factors were strong mitigating influences on the behavior that occurred not only that night but the behaviors that Mr. Mason engaged in prior to his incarceration.

Diagnostic Impression is 1) Substance Induced Psychosis versus Substance Induced Intoxication
2) Personality Disorder NOS with Antisocial features.

Thank you very much for this forensic consultation. Should you have any questions please contact.

Respectfully Submitted,



Robert A. DeFrancisco, PHD, ABMP
Diplomate, Medical Psychology
Certified Forensic Examiner
Master Psychopharmacologist

Exhibit 3

LAWRENCE R. MAIER, Ph.D.
 Licensed Psychologist
 Certified Forensic Examiner

ASSOCIATES FOR PSYCHIATRY & COUNSELING
 250 Chateau Dr., Suite 145
 Huntsville, AL 35801
 Telephone: (205) 881-8147
 Fax: (205) 880-3299

October 17, 1994

Honorable Thomas Younger
 Circuit Court Judge
 Madison County Courthouse
 100 North Side Sq.
 Huntsville, Al 35801



RE: Derrick O'Neal Mason
 Case No.: CC-94-922
 CC 74 7231

Dear Judge Younger:

Please find enclosed the Outpatient Evaluation Report on the above-named defendant, who was evaluated by Dr. Lawrence R. Maier, Ph.D., on October 6, 1994.

If additional information is needed, please advise. Please note that pursuant to Rule 11.5, Alabama Rules of Criminal Procedure, a copy of this report has not been provided to the Circuit Clerk.

Sincerely,

Renae Phillips
 Renae Phillips
 Court Liaison

Enclosure: Outpatient Forensic Evaluation Report

CC: Honorable Randy Ferguson
 Honorable Karen Hall
 Taylor Hardin Secure Medical Facility

OUTPATIENT FORENSIC EVALUATION

NAME:	Derrick O'Neal Mason
DATE OF BIRTH:	August 9, 1947
CHRONOLOGICAL AGE:	20-1 Years
MADISON COUNTY CASE NUMBER:	CC94-922, CC94-923Y
DATE OF EVALUATION AND REPORT:	October 6, 1994

REFERRAL INFORMATION

Mr. Derrick Mason is a 20 year old, never married black male, court-ordered by the Honorable Circuit Court Judge Thomas Younger for assessment of Competency to Stand Trial and Criminal Responsibility. Mr. Mason faces one count each of Capitol Murder and Robbery, according to the court order. Information received from defense attorney Mr. Randy Ferguson indicates charges of Capital Murder and Attempted Murder. Due to security concerns, assessment was done in the Madison County Jail. There has been no prior contact between defendant and this examiner. This assessment has the approval of authorities from the Taylor Hardin Secure Medical Facility.

NOTIFICATION OF RIGHTS

Care was taken to explain all central notification issues, both orally and in writing: reasons for assessment; conditions of possible later testimony; limited confidentiality and report recipients; and that cooperation during assessment will not be used to help determine guilt. Mr. Mason showed no difficulty in understanding any of the conditions and correctly signed and dated the standard notification form used to acknowledge understanding and willingness to cooperate. No assessment difficulties were encountered.

SUMMARY OF ALLEGED OFFENSES

According to information received from Madison County Assistant District Attorney Ms. Karen Hall, defendant did, during the early morning hours of March 27, 1994, shoot to death with a borrowed pistol a female convenience store clerk during an unsuccessful robbery attempt. Mr. Mason allegedly fled the crime scene but - thanks to suspicions about his involvement with two earlier crimes - was arrested on March 30, 1994. He has since been incarcerated in the Madison County Jail, at first in isolation because of fighting, but now in the general population.

DATA SOURCES

Circuit Court Order for Evaluation.
 Incident Report.

Police Investigation Reports.

Witness Statements.

Defense Attorney Information Form.

Alabama Department of Forensic Sciences Report, Including Autopsy on Victim.

Phone Call to Jail Personnel Regarding Meds/Adjustment.

CLINICAL ASSESSMENT

Because of security concerns, assessment took place in a quite room in the Madison County Jail. Mr. Mason was sufficiently talkative and cooperative, and no assessment difficulties were encountered.

He is a large man (280 # and 6'4"), dressed in the usual two-piece orange prison garb. Fingernails were unusually long and clean. He too was clean and neat, recently shaved, with curly, close-cut hair. There were no unusual physical stigmata noted.

Mr. Mason denied any significant prior mental health or substance abuse history (evaluation or treatment). He did reveal a long history of learning and behavioral problems during his school years, having attended some special education programing, and being kicked out of school in ninth grade at age 16 for "gang violence". He also reported a multi-year history of treatment with the stimulant drug Ritalin, a drug often used in children with Attention Deficit/Hyperactivity Disorders. Ritalin administration stopped when he was about 15. On the positive side, he did complete a cosmetology skill program at a local technical school and had part-time employment as a hair cutter somewhere in Tennessee at the time of the murder.

He reports a long history of illegal street drug abuse (as well as alcohol) including daily use of marijuana, occasional LSD, and on the night of the murder, a combination of LSD and strong marijuana ("reefer"). To my knowledge, he has never sought nor received treatment for substance abuse, even though others have apparently been concerned about his behavior for most of his adolescent years.

Mental status evaluation revealed no problems with orientation, be it time, place, person, or purpose. His memory, both short and long term, was intact and intellectual functioning is estimated to fall in the normal range. There was no evidence of thought or major feeling disturbance, except for possible drug-caused hallucinatory activity, including on the night of the alleged murder. Mr. Mason's current emotional state showed no unusual anxiety, depression, remorse, or even state-appropriate sadness. He was at all times calm and appropriate, with speech clear, easily understood, and not reflective of any content impairment. He did express pervasive beliefs of mistrust and suspicion toward the entire judicial system, although he did admit to some attitude change now that he can see things from society's point of view on police and lawyer shows watched on TV.

His concentration and attention were adequate or better. He showed no trouble attending to what was going on. I saw no evidence of thought looseness of associations or other thought disorder. There is no past or current evidence to suggest danger of self-harm. He does not show signs of delusional thinking. Eye contact was adequate and there were no unusual mannerisms.

At times, though, he did seem bored, as evidenced by his cleaning of his fingernails - one hand with the other. He appeared to maintain appropriate and constant control at all times.

Based on all available current information, the following diagnostic impressions are offered for the court's consideration (DSM-IV):

Axis I: Alcohol Abuse (in forced remission).
Hallucinogen Abuse (in forced remission).
Cannabis Abuse (in forced remission).

Axis II: Anti-Social Personality Disorder, Chronic, Severe.

Defendant is in no appreciable distress, and current adjustment-given circumstances, seems adequate. After some initial fighting, there have been no management problems at the jail. No judicially ordered emergency care is indicated or recommended.

FORENSIC ASSESSMENT

Competency to Stand Trial

In order to assess the defendant's ability to assume the role of a competent defendant, he was administered the Competency to Stand Trial Assessment Instrument (CAI) as part of the evaluation. The CAI is a semi-structured interview device designed to measure the defendant's knowledge and understanding in 13 areas related to trial competency.

Mr. Mason showed a generally adequate performance on the CAI, including rather vivid recall of some of the events surrounding the alleged crime. He does know the nature and seriousness of the charge against him, although he did not seem knowledgeable as to the full range of possible penalty if convicted. Although he did know that he could be sentenced to life in prison without parole, he seemed surprised when informed that a judge might also be able to sentence a guilty person to death for a Capital Murder conviction. His assessment of possible case outcome seemed reasonable given the facts available.

He has adequate capacity in regard to his knowledge of the duties of various courtroom participants; a defense attorney is "to defend me, to protect me"; a prosecuting attorney "is trying to skin me... to prosecute... to go against me with the evidence..."; a judge "regulates and sentences"; a jury "decides if I'm guilty or not"; and witness "tell what they seen or thought they seen".

Although defendant's attitudes reflect widespread suspicion and distrust toward the judicial system, these limitations are based on prior experience and learning, not mental illness. Thus, although he suspects his attorney's motives, he is able to cooperate and participate in legal decisions, if he wishes. That includes adequate understanding of court procedures, as well as concepts such as plea-bargaining and the adversarial process. Furthermore, he does know what to do if faced with a lying or hostile prosecution witness, and is also sufficiently experienced with courtroom events and rules, to behave himself at all times if he wishes. There is adequate

self-serving motivation present and he is capable of testifying in his own behalf, if that is recommended.

When asked about his thoughts, feelings, and timing of his actions surrounding the alleged offense, he was forthright and believably truthful. He showed good recall for details of pre-crime drug involvement as to type and consumption, and could also report with adequate clarity the apparent drug-caused hallucinatory activity that occurred during the crime itself. Such symptom report is not uncommon from LSD intoxicants, and it is my opinion that this man's symptomatology then was drug-related.

At the present time, Mr. Mason is at or above the general level necessary for adequate understanding and participation in a trial process. He has had prior experience with the judicial system and well understands the adversarial process. His generalized suspiciousness about the system and how it works should not appreciably interfere with his ability to understand proceedings and to cooperate when necessary with his attorney. He does have sufficient capacity to testify in his own behalf. It is recommended that he be returned to court to face the charge against him.

Mental State at the Time of Offenses

All of the evidence available to me suggests that Mr. Mason was likely significantly intoxicated at the time of the murder. He had been consuming numerous drugs before the crime (alcohol, LSD, "Mad Dog", and Marijuana) and stated his belief that "I had never been that high before". Apparently his intoxicated state continued well into the next day, by his own report.

I see little if any evidence to suggest the operation of any significant mental illness or mental defect at the time of the crime. Being intoxicated is not in and of itself any indication that he was unable to understand the difference between right and wrong and to appreciate that difference. In my opinion the auditory hallucinations that he may have experienced around the time of the murder were not primary to the central motivational state of obtaining money by robbery, although he may have been hypervigilant and not capable of adequate perception from either external or internal stimuli. Certainly his judgment was impaired at the time of the crime but it was due to his drug-altered emotional and cognitive state, in combination with a long-standing personality disorder with impulsivity and poor emotional control. In total, there is evidence from interview, defendant's prior statements, and police reports that he did know right from wrong at the time of the crime. In my opinion there is not sufficient evidence to warrant a mental state defense.

SUMMARY AND RECOMMENDATIONS

Mr. Mason was evaluated for competency to stand trial and criminal responsibility at the judicial request of Judge Thomas Younger. He faces one charge each of Capital Murder and Robbery. Evaluation is now complete and opinions are that he does understand the nature and seriousness of the charges against him and he can assist his attorney in his own defense if he chooses to do so. He is able to testify in his own behalf if recommended. As for his mental state at the time of the crime, he was apparently highly intoxicated, although not without the ability to distinguish right from wrong. Defendant shows a clear history of serious polysubstance abuse, and gradually

worsening behavioral and anti-social concerns are evidenced in the historical information available for review. The current charges are not the first time that this young man has been in serious trouble for violation of societal rules.

Opinions are that there is not sufficient evidence to warrant a mental state defense and that he should be returned to court to face the charges against him.

As a psychologist, I recognize that questions of competency and criminal responsibility are properly matters for the court and/or jury to decide. Therefore, the opinions offered in this report are advisory only. I would be happy to provide additional testimony and/or information should the court require.

Respectfully submitted,



Lawrence R. Maier, Ph.D.
Certified Forensic Examiner
Licensed Psychologist

LRM/trp

CC: The Honorable Randy Ferguson, Defense Attorney
The Honorable Karen Hall, District Attorney
Taylor Hardin Secure Medical Facility

EXHIBIT C

STATE OF NORTH CAROLINA

)

)

ss.

COUNTY OF TRANSYLVANIA

)

William Alexander Morton, Jr., being duly sworn, deposes and says:

1. My name is William Alexander Morton, Jr. I am above the age of twenty-one years. I am under no legal disability. I am fully competent to make this affidavit. I have never been convicted of a felony or crime involving moral turpitude. I have personal knowledge of the matters contained herein; and the matters stated herein are true and accurate to the best of my knowledge and belief.

2. I obtained my Bachelor of Science in Pharmacy in 1972 from the University of North Carolina and Doctorate of Pharmacy in 1975 from the University of Tennessee. I completed my residency in Hospital and Clinical Pharmacy in 1976 at the University of California in San Francisco. I am board certified in Psychiatric Pharmacy Practice and licensed to practice Pharmacy in North Carolina, California and South Carolina. I am currently a Professor Emeritus in Pharmacy and Clinical Sciences in the College of Pharmacy at the Medical University of South Carolina ("MUSC") in Charleston, SC. Previously, I was a Professor of Pharmacy and Associate Professor of Psychiatry and Behavioral Sciences for thirty-four years in both the Medicine and Pharmacy programs at MUSC and specialized in the teaching, practice, and research of psychopharmacology. I have a private practice in Brevard, North Carolina where I consult in clinical psychopharmacology. I have conducted extensive research on the psychopharmacological treatment of mood, anxiety, and substance disorders. I have

testified as an expert witness in psychopharmacology in over 50 capital murder cases, in addition to 20 other types of cases, regarding the effects of drugs on the brain. A copy of my resume is attached hereto as Exhibit 1.

3. During the June 16, 1995 sentencing hearing, Derrick O'Neal Mason testified that on March 27, 1994, he drank "a six pack" of alcohol and used marijuana. He testified that he smoked "blunts", which were "Cuban tobacco cigars with the tobacco emptied out and stuffed with marijuana." In his testimony, he estimated that the Cuban cigar was rather long and as round as a highlighter. Mr. Mason testified that he had "three maybe four" blunts, which was an every evening event, in addition to the alcohol. In the cross-examination of Mr. Mason, when asked about the details of the crime, he responded, "I don't remember the details of the crime." He subsequently reported his inability to recall facts or reported "scattered" recollections a total of ten (10) more times to questions asked in cross-examination. A copy of Mr. Mason's sentencing hearing testimony of June 16, 1995 is attached hereto as Exhibit 2.

4. The October 17, 1994 Outpatient Forensic Evaluation Report of Lawrence R. Maier, Ph.D., Licensed Clinical Psychologist and Certified Forensic Examiner states, "He reports a long history of illegal street drug abuse (as well as alcohol) including daily use of marijuana, occasional LSD, and on the night of the murder, a combination of LSD and strong marijuana ("reefer")." Dr. Maier further states, "he was apparently highly intoxicated." Dr. Maier offered diagnostic impressions for the court's consideration, including Axis I diagnoses of Alcohol Abuse, Hallucinogen Abuse and Cannabis Abuse all in forced remission and Anti-Social

Personality Disorder, Chronic, Severe, an Axis II diagnosis. Mr. Mason reported hallucinatory activity, which Dr. Maier indicated was not uncommon from LSD intoxicants. Dr. Maier opined that Mr. Mason's symptomatology was "drug-related." Dr. Maier reported that Mr. Mason was "likely significantly intoxicated at the time of the murder as he consumed numerous drugs before the crime, including alcohol, LSD, "Mad Dog," and marijuana" and stated that Mr. Mason "had never been that high before." Dr. Maier reported that apparently Mr. Mason's intoxicated state continued well into the next day and that he suffered auditory hallucinations during the crime. A copy of the October 17, 1994 Outpatient Forensic Evaluation Report is attached hereto as Exhibit 3.

6. Mr. Mason indicated that he learned subsequent to March 27, 1994 that the marijuana blunt he smoked was dipped in embalming fluid. This information was conveyed in a conversation with the informant: "Although the informant represented to Mr. Mason that it was only a marijuana cigarette, the informant told Mr. Mason the next day that it had been laced with embalming fluid. Marijuana cigarettes dipped in embalming fluid, and then dried, often also contain phencyclidine ("PCP"). See Petition for Relief from Judgment in a Death Penalty Case Pursuant to Rule 32 of the Alabama Rules of Criminal Procedure, October 17, 2001 at p. 4.

7. The September 6, 2011 forensic evaluation report by Robert A. DeFrancisco, Ph.D. further describes Mr. Mason's use of substances including marijuana, alcohol, and LSD. Mr. Mason's descriptions of his response to marijuana laced with embalming fluid includes hallucinations, a trance-like state, an out-of-body experience, feeling bizarre, detachment, agitation,

and confusion. The confusion occurred while driving and there was a difficulty in recalling events. Dr. DeFrancisco's diagnostic impression of Mr. Mason's psychotic state was assessed as: Substance Induced Psychosis versus Substance Induced Intoxication. A copy of the September 6, 2011 Forensic Evaluation Report is attached hereto as Exhibit 4.

8. The testimony by Mr. James Anthony Lee, a jailer at the Huntsville City Jail and employee of the Huntsville Police Department describes the appearance and behavior of Mr. Mason on March 30, 1994, the morning after Mr. Mason's arrest and his transportation to appear before the Judge regarding charges in his case. Mr. Lee describes Mr. Mason as being relatively nonresponsive: "My impression was I couldn't get anything out- - I couldn't get any cooperation out of him at all.", "...the man would not even answer my questions." and, "He had no response." He describes Mr. Mason as having "different" expressions, "No facial expressions except for once I think he kind of gritted his teeth a little bit and growled at me." He describes Mr. Mason as confused, acting "strange" and appearing as if "His mind was somewhere else, is the best way I could put it." Additionally, he stated, "I have never seen anyone quite that solemn and be agitated..." A copy of Mr. Lee's testimony in his initial trial on November 8, 1994 and is attached hereto as Exhibit 5.

9. Marijuana or cannabis refers to a preparation of the Cannabis plant that is used as a psychoactive drug. Its major psychoactive component is tetrahydrocannabinol ("THC"). Cannabis contains over 400 different chemical compounds, including over 60 other cannabinoids ("CBD"). Cannabis has psychoactive and physiological effects. Even a small amount of THC will have a

perceptible psychoactive effect including subjective change in perception, mood, increased heart rate, lowered blood pressure, and impairment of short-term and working memory. THC and the CBDs play a significant role in its psychoactive effects.

10. Lysergic acid diethylamide ("LSD") is a semisynthetic psychedelic drug known for its psychological effects including altered thinking and altered sense of time. In some cases, the individual may experience psychiatric symptoms such as anxiety, paranoia, hallucinations, and delusions. LSD's psychological effects vary by person. An individual may experience psychophysical reactions, such as an altered sense of time, loss of control, paranoia, and panic. An individual may experience a cognitive shift as well as changes in auditory and visual perceptions, such as trails of moving objects ("tracers"). LSD may impair the individual's ability to make sensible judgments and understand dangers. It may also trigger panic attacks or feelings of extreme anxiety. Some may experience severe psychotic symptoms, which is usually of short duration.

11. A marijuana joint can be dipped in embalming fluid to increase its effects. Embalming fluid consists of formaldehyde and ethyl alcohol, which serves as a vehicle of the dissociative anesthetic, phencyclidine, also known as "PCP". Small amounts of the drug, PCP, can enhance marijuana's effects as well as cause harmful reactions. It is common for marijuana to be laced with embalming fluid and PCP ("Fry" is the street name for this technique.) as both produce a marked, altered state with hallucinogenic effect. Such a hallucinogenic effect may be psychedelic apparitions or feelings of euphoria or rage. Marijuana dipped in embalming fluid and laced with

PCP can have a number of short-term and long-term effects. Short-term effects may include anger, frustration, hallucinations and delusions, impaired vision and coordination, loss of consciousness, memory loss, paranoia, and physical violence. Cognitive effects can last for months.

12. Phencyclidine (PCP) was initially developed as an injectable anesthetic agent for use in humans, but was later removed from the market because of profound and serious psychiatric symptoms in patients following its use in surgery. It was then used extensively in animals because these reactions did not occur, but was later completely removed from the market because of a high rate of diversion as an agent of abuse in the human population. It is known as a dissociative anesthetic because it produces different levels of anesthesia, allowing the patient to still breath and have some bodily function, but the patient does not process information and consequently has no memory for surgical events. Unfortunately, symptoms of delirium, extreme excitement, disorientation, and confusion are quite common. Some drug users enjoy the effects of "feeling all powerful", being "out of their body", with extreme changes in perceptions. This dissociative state is one in which the person is totally detached from his environment and in a trance, but still able to move. Other drug users totally avoid any contact with this type of drug, due to the unpleasant and long lasting effects they experience. PCP's effects are often unpredictable and are typically felt within minutes and last for hours. This unpredictability has been found to be associated with one of the desirable effects for some users. Some individual users may experience the drug's effects for days to weeks. These effects include feelings of detachment from reality, time/space distortion, autism, thought disorder, inability to

move, hallucinations, panic, and fear. Users can feel invulnerable, with exaggerated strength but vacillate with symptoms of severe disorientation and violence. Memory deficits have been reported to last as long as a year. PCP intoxication has been used as a model to understand and treat schizophrenia.

13. The use of several drugs at the same time can produce combined or synergistic effects. Synergistic effects are those additive effects where the response is much more than anticipated. An example would be illustrated by "1 + 1 = 3." Combining marijuana with PCP and embalming fluid would produce an unexpected, excessive "high" which may have many unanticipated effects. Used along with one "blunt" containing phencyclidine (PCP), the additional use of 2-3 large "blunts" containing marijuana is a significantly large amount. Combining this use with alcohol further complicates the predictability of the type, intensity, and duration of the desired, as well as undesired effects. Seldom are clinical studies conducted with more than two drugs as the outcomes are unpredictable and dangerous. Case reports from the emergency room and acute psychiatric hospital often form the basis of understanding what occurs when an individual combines several psychoactive substances.

14. Mr. Derrick Mason experienced many side effects and symptoms consistent with phencyclidine (PCP) intoxication. This is based on his verbal reports to health care practitioners as well as observations and reports of correctional officers.

a. His report to Dr. Maier that he "had never been this high before." is consistent with the extreme nature of

phencyclidine's (PCP's) effects, which usually exceeds the high produced by marijuana. Mr. Mason reports hearing voices or auditory hallucinations.

b. Hallucinations are frequently experienced with phencyclidine (PCP) and rarely experienced with marijuana.

c. Unpredictability and violence occurred the evening of the crime and these behaviors are more likely to occur with phencyclidine use.

d. Dr. Maier's report of the duration of symptoms, lasting well into the next day, adds weight to the likelihood of phencyclidine intoxication, as this is often how phencyclidine intoxication symptoms will present. The descriptions by Mr. Lee, the Huntsville City Police Department employee, who describes him unresponsive and at the same time agitated, is consistent with a person having received a dissociative anesthetic. A person would be unlikely to show much facial expression if he is in a trance-like the state induced by phencyclidine (PCP).

e. Amnestic effects are frequently reported with the use of anesthetic agents and are considered a positive effect, but only if one has had surgery. Mr. Mason's inabilities to remember certain events during and after the crime are consistent with taking a dissociative anesthetic, such as phencyclidine (PCP). Mr. Mason reports in his initial trial that he was unable to accurately describe details during the crime as well as during his initial police interview with Detective Bud Parker. These amnestic side effects might be construed as self-serving for Mr. Mason if the pharmacological side effects of

phencyclidine were not presented.

15. Psychoactive drugs can have profound effects on a person's ability to think, feel, and behave. Failure to educate the legal system and the jury regarding the nature, incidence, severity, and description of the serious psychiatric symptoms caused by all psychoactive substance, both legal and illegal, can result in uninformed decision with far-reaching, irreversible consequences. Almost everyone has an opinion on how "drugs" affect someone, why one uses them, and how to provide treatment. Often these beliefs are developed through individual experiences with themselves, their relatives/friends or through the media. Seldom do people avail themselves to a rational, educated program to understand drug use and addiction. Currently, much more is known about addiction than what we knew in the 1960's, yet those older beliefs remain popular, especially the concept of a moral failing in how one becomes involved with substances. Addiction is a complicated, chronic, relapsing, biological illness with known causative factors, predictive symptoms and consequences of use. Effective treatments for addiction have been identified and are available. Understanding these issues is essential in providing a person with an unbiased and fair experience in the legal system. Adequate understanding of the profound effects of drugs on cognitive functioning such as awareness, understanding, ability to effectively think and make decisions, plus one's ability to perceive the reality of the world, can prevent financial waste as well as further promote the delivery of justice. When a person is experiencing psychotic symptoms, that person, by definition, is not operating by the views and concepts of the rational world in which we agree by consensus is "reality." Understanding a person's experience of a psychotic symptom can

only be a rough guess, an estimate based on one's experience, but still, only a guess because no one has the ability to read another person's mind. When a person is experiencing a psychotic symptom, one's ability to understand right and wrong may be totally irrelevant if we do not have agreement on what is "reality". For example, one may understand the difference of right and wrong of killing a person and make the wrong decision if the person is perceived as an evil terrorist or alien and their behavior is experienced as threatening!

16. In my professional opinion, Mr. Derrick Mason had symptoms consistent with phencyclidine (PCP) intoxication during and after the murder of Ms. Angela Cagle on March 27, 1994. Both psychologists who conducted independent forensic evaluations assessed the severity of Mr. Mason's intoxication and both concluded that Mr. Mason was "highly intoxicated." In my review of his trial documents, two factors appear overtly obvious to me as an expert in the area of psychopharmacology: 1) information regarding addiction, phencyclidine's pharmacology, and phencyclidine's psychiatric symptoms were not adequately presented in the initial trial proceedings or the subsequent appeal documents; and 2) the long duration of the psychiatric symptoms frequently produced by phencyclidine, a potent anesthetic agent, would be a major complicating issue in Mr. Mason's understanding of his legal rights when he was arrested. This major complication would have to do with Mr. Mason being under partial anesthesia from the PCP, which would have interfered with his ability to comprehend his rights and be able to make assertive statements that he did not want to continue to participate in the interview after his arrest. His level of intoxication could have only been assessed by a health profession knowledgeable about the

intoxicating and psychiatric side effects caused by phencyclidine (PCP), a well-known, dissociative anesthetic that experienced a high incidence of abuse in the 1990's.

William Alexander Morton Jr.
William Alexander Morton, Jr.

Subscribed and sworn to before me
on this 12 day of September, 2011.
Notary Public

[Handwritten signature]

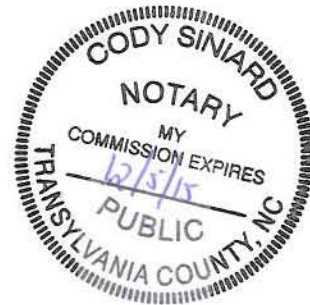


Exhibit 1

CURRICULUM VITAE

William Alexander Morton Jr., PharmD

July 2011

PERSONAL DATA:

Home Address: 130 Greenfield Circle
Eagle Lake
Brevard, NC 28712

Business Address: 102 College Station Dr.
Suite 3, #101
Brevard, NC 28712

Home Telephone: (828) 884-2075
Cell Telephone (843)-364-6306
E-mail: mortona@musc.edu
mortona@gmail.com

LICENSURE:

Licensed to practice Pharmacy in:	South Carolina	#4919
	California	#30133
	North Carolina	#5944

BOARD CERTIFICATION:

Board certified in: Psychiatric Pharmacy Practice, #496285,
December, 1996, Recertified December, 2004
Board of Pharmaceutical Specialties (currently 553 worldwide
members) www.bpsweb.org

EDUCATION:

University of California at San Francisco:
Residency in Hospital and Clinical Pharmacy
June 1976

University of Tennessee:

Doctor of Pharmacy
June 1975

University of North Carolina:

Bachelor of Science in Pharmacy
May 1972

CURRENT APPOINTMENT:

Professor Emeritus in Pharmacy and Clinical Sciences (2004), Professor (1996), Tenured (1982), College of Pharmacy, Medical University of South Carolina (1976)

PAST APPOINTMENTS

Associate Professor of Psychiatry and Behavioral Sciences (1997-2007), Department of Psychiatry and Behavioral Sciences, College of Medicine, Medical University of South Carolina (1978).

Associate Member, College of Graduate Studies, Medical University of South Carolina (2004-2007).

PAST CLINICAL PHARMACY EXPERIENCE:

Center for Drug and Alcohol Program

Inpatient team member providing psychopharmacological assessment, teaching, and consultation to this program, as well as served as an education group leader (1991 - 2004).

Clinical Pharmacist

Provide educational activities for Doctor of Pharmacy students and provide clerkship experience for both BS and Doctor of Pharmacy students in the area of psychiatry (1977 - 2004).

Clinical Psychopharmacology Research Section

Coordinated and developed clinical pharmacy services and served as a co-investigator in studies conducted in the Clinical Research Section of the MUSC Department of Psychiatry (1986 – 2002).

Psychopharmacology Clinical Supervisor

Served as a supervisor in the outpatient program for patients receiving psychoactive medications and being treated by third-year psychiatry residents. (1984 - 2002).

Psychopharmacology Unit

Served as the Assistant Director and Clinical Supervisor in this outpatient program which is staffed by third-year psychiatry residents. Also, provide administrative, clinical, and educational services in this program which I helped initiate and develop (1984-2001).

Psychopharmacy Residency Program

Coordinator and preceptor for this ASHP approved Psychopharmacy Residency Program, 1983-1995.

Fenwick Hall Hospital

Initiated and developed clinical pharmacy services at this private chemical dependency treatment center on Johns Island, SC. Clinical services included group patient education presentations, individual patient consultation, medication monitoring and assessment, staff education regarding psychopharmacological issues, drug utilization reviews, developing a formulary, chairman of pharmacy and therapeutic committee, and developing a medication distribution system. Approximately 675 presentations were given to patients on the following topics: "Withdrawal Syndromes," "Medication Information," "Physical Side Effects of Alcohol," "Psychological Side Effects of Substances," "Pharmacological Treatment of Psychiatric Disorders," and "Alternatives to Using Substances." These services were provided between April, 1980 and May, 1994.

Charleston County Memorial Hospital

Provided psychopharmacology consultation to the psychiatry unit which consisted of interviewing, evaluating, and discussing a patient and the patient's current/future drug therapy. A didactic presentation on psychopharmacological issues was also presented. Approximately 425 patient consultations and drug therapy presentations were conducted between June, 1985 and June, 1994.

Mental Health Center

Charleston Area Mental Health Center, provided clinical pharmacy consultation to this community mental health center from 1987 to 1991.

Inpatient Department of Psychiatry

Developed and provided clinical pharmacy services for the MUSC Department of Psychiatry inpatient unit. Activities on the Adult Inpatient Service included providing medication information, monitoring drug therapy, as well as psychopharmacology and pharmacokinetic consultation (1981). Consultative services were also provided to the Adolescent and Child Psychiatry Divisions. These services were provided from July 1981 to June 1991.

Access

Participated as a full member in this private psychiatric outpatient practice providing medication evaluation and monitoring for outpatients requiring psychopharmacologic agents from June 1981 to June 1983.

Charleston VA Medical Center

Initiated and provided Clinical Pharmacy Services for the Inpatient Psychiatry Service from January 1977 until June 1981; initiated and provided Clinical Pharmacy Services in the Mental Hygiene Clinic which included psychiatric drug therapy, served as a primary practitioner to 128 outpatients, provided education programs to staff and students, and provided psychiatric evaluation to off-schedule patients from June 1977 to June 1982.

Medical University of SC

Developed Clinical Pharmacy Services MUSC Seizure Clinic, served as primary practitioner to patients receiving anticonvulsant drug therapy from March 1977 until June 1981.

Medical University of SC

Initiated and provided Clinical Pharmacy Services in the Medical Screening Clinic from October 1976 to January 1979.

University of Tennessee

Clinical clerkships included the following: General Medicine, Psychiatry, Pulmonary Medicine, Drug Information, Ambulatory Care, and Pharmacy Practice.

Hot Springs Health Program, Hot Springs, NC

Served as Director of Pharmacy Services from June 1973 to May 1974. Responsibilities included drug procurement, outpatient dispensing, controlled substance records, and the following clinical pharmacy services: patient counselling, medication histories, patient monitoring, providing drug information to the medical and dental staff, drug advisor to nurse practitioners, and primary care practitioner for select hypertensive patients.

Cabarrus Memorial Hospital, Concord, NC

Served as pharmacist intern and staff pharmacist from June 1972 to May 1973. Responsibilities included the practice and supervision of inpatient dispensing, outpatient dispensing, IV additives, controlled substance records, participation in cardiopulmonary emergencies, and providing drug information to the pharmacy and medical staff.

SHAC Clinic

Member of the Student Health Action Committee; provided pharmacy services at the SHAC Edgemont Clinic in Durham, NC during the Spring of 1972.

Clinical Clerkship

Orientation to clinical pharmacy services at Duke University Hospital while attending University of North Carolina School of Pharmacy, Spring 1972.

Family Pharmacy Practice

Practiced family pharmacy as a pharmacy intern in Wilmington, NC, June 1968 to September 1968.

PUBLICATIONS:

1. **Morton WA**, Bridges ME. "Pharmaceutical services in a medical screening clinic." Am J Hosp Pharm 1978; 35:574–78.
2. Wannamaker BB, **Morton WA**, Gross AJ, Saunders S. "Improvement of antiepileptic drug levels following reduction of intervals between clinic visits." Epilepsia 1980; 21:155–62.
3. **Morton WA**, Sexauer JD, Miles SM. "Duplication of benzodiazepine prescriptions by outpatients." Hospital Formulary 1981; 16:826–31.
4. Doyal LE, **Morton WA**. "The clinical usefulness of lithium as an antidepressant." Hosp Community Psychiatry 1984; 35:685–91.
5. **Morton WA**. "Commentary on buspirone hydrochloride: A unique new anxiolytic agent." Pharmacotherapy 1984; 4:324.
6. Anton RF, Paladino JA, **Morton WA**, et al. "Effect of acute alcohol consumption on lithium kinetics." Clin Pharmacol Ther 1985; 38:52–55.
7. Steele TE, **Morton WA**. "Salicylate-induced delirium." Psychosomatics 1986; 27:455–56.
8. Santos AB, **Morton WA**. "More on clonazepam in manic agitation." J Clin Psychopharmacol 1987; 7:439–40.
9. Doyal LE, **Morton WA**, Crane DF. "Antihypertensive drug therapy in alcohol dependence: A drug utilization review in a chemical dependence treatment facility." Psychosomatics 1988; 29:301–306.
10. Lydiard RB, Laird LK, **Morton WA**, Steele TE, Kellner C. "Fluvoxamine, imipramine

- and placebo in the treatment of depressed outpatients: Effects of depression." Psychopharmacol Bull 1988; 25(1):68–70.
11. Malcolm R, Gabel T, **Morton A**. "Idiosyncratic reaction to naltrexone augmented by thioridazine." Am J Psych 1988; 145(6):773–74.
 12. Malcolm R, Gabel T, **Morton A**. "More on idiosyncratic reactions to naltrexone." Am J Psych 1989; 146:124–25.
 13. **Morton WA**, Santos AB. "New indications for benzodiazepines in the treatment of major psychiatric disorders." Hosp Formul 1989; 24:274–80.
 14. Santos AB, **Morton WA**. "Use of benzodiazepines to improve management of manic agitation." Hosp Community Psych 1989; 40:1069–71.
 15. Liotta C, **Morton A**. "A review of the pharmacologic management of panic disorder." Pharm Perspec Ambul Care 1991:3:43–47.
 16. **Morton WA**, Jackson CW, Santos AW, Hulstrand EP. "Clonazepam for psychiatric disorders? A look at its use in an inpatient psychiatric facility." Hosp Formul 1992:27:407–10.
 17. Johnson MA, Lydiard RB, **Morton WA**, Laird LK, Kellner C, Steele TS, Ballenger JC. "Effect of fluvoxamine, imipramine, and placebo on catecholamine function in major depression", Psychiatric Research, 1993:27:161–72.
 18. Laird LK, Lydiard RB, **Morton WA**, Steele TE, Kellner C, Thompson NM, Ballenger JC. "Cardiovascular effects of imipramine, fluvoxamine, and placebo in depressed outpatients. J. Clin Psychiatry, 1993:54:224–28.
 19. **Morton WA**, Sonne SC, Lydiard RB. "Fluoxetine associated side effects and suicidality". J Clin Psychopharmacology, 1993:13:292–95.
 20. Lydiard RB, **Morton WA**, Emmanuel NP, Zealberg JJ, Laraia MT, Stuart GW, O'Neil PM, Ballenger JC. "Preliminary Report: Placebo-controlled, double-blind study of the clinical and metabolic effects of desipramine in panic disorder. Psychopharmacol Bull, 1993:29:183–188.
 21. **Morton WA**, Sonne SC, Lydiard RB. "Lithium side effects in the medically ill". Int'l J Psychiatry in Medicine 23(4):357–382, 1993.
 22. **Morton WA**, Laird LK, Crane DF, Partovi N, Frye L. "A prediction model for identifying alcohol withdrawal seizures." Am J Drug Alcohol Abuse 1994:20:75–86.
 23. Jackson CW, **Morton WA**, Lydiard RB. "The pharmacologic management of obsessive compulsive disorders." Southern Medical Journal 1994:87:310–321.

24. Sonne SC, Brady KT, **Morton WA**. "Substance abuse and bipolar affective disorder". J Nerv Ment Dis 1994;182:349–352.
25. Brady KT, Lydiard RB, Kellner CH, Joffe RT, Laird LK, **Morton WA**, Steele TH. "A comparison of imipramine and fluvoxamine on the thyroid axis." Biol. Psychiatry 1994;36:778–779.
26. **Morton WA**, Sonne SC, Verga MA. "Venlafaxine: A structurally unique and novel antidepressant." Ann Pharmacother 1995;29:387–395.
27. **Morton WA**, Mendenhall AR, Windsor PG, Lydiard RB. "Clinical psychopharmacy consultations: Acceptance of recommendations on an adult inpatient psychiatric unit." Hosp Pharmacy 1995;30:786–790.
28. Brawman-Mintzer O, Lydiard RB, Phillips KA, **Morton A**, Czepowicz V, Emmanuel N, Villarreal G, Johnson M, Ballenger JC. "Body dysmorphic disorder in patients with anxiety disorder and major depression: A comorbidity study." Am J. Psychiatry 1995;152:1665–1667.
29. **Morton WA**. "Chemical dependence: A look at what does and doesn't work." J. Pharm. Practice 1996;9:147-154.
30. Markowitz JS, **Morton WA**, Gaulin BD. "Antipsychotic blood concentrations: Nonstandardization of reference ranges." J Clin Psychopharmacology 1997;17:121–123.
31. Villarreal G, Johnson M, Lydiard RB, **Morton WA**. Desipramine plasma levels and clinical response in panic disorder. Canadian Journal of Psychiatry 1995;40(2):110–111 (erratum re: authorship published 42:212, 1997).
32. Johnson MR, Marazziti D, Brawman-Mintzer O, Emmanuel NP, Ware MR, **Morton WA**, Rossi A, Cassano GB, Lydiard RB. "Abnormal peripheral benzodiazepine receptor density associated with generalized social phobia." Biol. Psychiatry 1998;43:306–309.
33. Easton MR, **Morton WA**. "An assessment of herbal weight loss products." J Pharm Practice 1999;12:240–250.
34. **Morton WA**. "Panic disorder." In Schwinghammer TL (ed.), Pharmacotherapy: A Patient-Focused Approach, 2nd Ed. Appleton & Lange, 1999.
35. Lorberbaum JP, George MS, Johnson MR, Emmanuel NP, Book SW, Mintzer O, **Morton WA**, Nahas Z, Bohning DE, Vincent D, Shastri A, Hamner M, Arana GW, Ballenger JC, Lydiard RB. "Feasibility of using fMRI in social phobics undergoing a public speaking task." Biological Psychiatry 1999;45:8s.
36. DeVane CL, Ware MR, Emmanuel NP, Brawman-Mintzer O, **Morton WA**, Villarreal G, Lydiard RB. "Evaluation of the efficacy, safety, and physiological effects of fluvoxamine in social phobia." Int Clin Psychopharmacol 1999;14:345–351.

37. **Morton WA.** "Cocaine and psychiatric symptoms." Primary Care Companion: J Clin Psychiatry 1999;1:109–113.
38. Emmanuel NP, Brawman-Mintzer O, **Morton WA**, Book SW, Johnson MR, Lorberbaum JP, Ballenger JC, Lydiard RB. "Bupropion-SR in treatment of social phobia." Depress Anxiety 2000;12:111–113.
39. **Morton WA**, Stockton GG. "Methylphenidate abuse and psychiatric side effects." Primary Care Companion J Clin Psychiatry 2000;2:159–164.
40. **Morton WA.** "Panic Disorder." In Schwinghammer TL (ed), Pharmacotherapy: A Patient-Focused Approach, 5th Ed Appleton & Lange, 2002.
41. **Morton WA**, Laird LK. "Obsessive-Compulsive Disorder." In Schwinghammer TL (ed), Pharmacotherapy: A Patient-Focused Approach, 5th Ed. Appleton & Lange, 2002 .
42. **Morton WA.** "The Course of Cocaine Addiction." US Pharmacist, 2002, 27:(HS)15-22.
43. **Morton WA**, Robert S. "Adverse consequences of alcohol abuse and dependence." US Pharmacist, 2002, 27(HS)27-37.
44. Markowitz JS, **Morton WA.** "Psychoses" in Pharmacotherapy Self-Assessment Program (PSAP, 4th Ed. ACCP, 2002.
45. **Morton WA**, "Anxiety Disorders: Presentation and Diagnosis" US Pharmacist, 2002. 27(9): (HS) 48-62.
46. **Morton WA.** "Anxiety Disorders: Treatment and Counseling", US Pharmacist 2002. 27(10):(HS) 5-17.

ABSTRACTS

1. Hurwitz GA, **Morton WA.** "Severe lithium neurotoxicity in association with concurrent diuretic therapy." Annual Meeting, American Academy of Clinical Toxicology, Salt Lake City, Utah, August 3–7, 1981.
2. Lydiard RB, Steele TE, Laird LK, **Morton WA**, Kellner CH. "Fluvoxamine, imipramine and placebo in the treatment of depressed outpatients: Effects on depression of catecholamine function." 28th Annual Meeting of the New Clinical Drug Evaluation Unit Program, Key Biscayne, Florida, May 31-June 3, 1988.
3. Lydiard RB, Laird LK, **Morton WA**, Steele TE, Kellner C, Laraia MT, Ballenger JC. "Fluvoxamine, imipramine and placebo in depressed outpatients." Presented at the NCDEU meeting, Key Biscayne, Florida, June 1–3, 1988.
4. Lydiard RB, Laird LK, **Morton WA**, Steele TE, Kellner CH, Laraia MT, Ballenger JC.

"Effects of fluvoxamine and imipramine on 24-hour urinary catecholamine output in depressed patients." American College of Neuropharmacology, Puerto Rico, December 12, 1988.

5. Lydiard RB, Laraia MT, Stuart GW, Zealberg JJ, **Morton WA**. "Desipramine effect on resting metabolic rate." American Psychiatric Association Annual Meeting, San Francisco, California, May 6–11, 1989.
6. Lydiard RB, Laird LK, **Morton WA**, Steele TE, Laraia MT, Ballenger JC. "Effect of fluvoxamine, imipramine and placebo on catecholamine function." American Psychiatric Association Annual Meeting, San Francisco, California, May 6–11, 1989.
7. Fossey MD, Lydiard RB, March WH, Stuart GW, **Morton WA**, Ballenger JC. "Personality assessment in female patients with irritable bowel disorders." American Psychosomatic Society Meeting, Boston, Massachusetts, March, 1990.
8. Lydiard RB, Fossey MD, Zealberg JJ, Laraia MT, **Morton A**, Ballenger JC. "Panic-Depression: Clinical features," American Psychiatric Association, New York, New York, May 12–17, 1990.
9. Lydiard RB, Fossey M, Marsh W, Ballenger JC, Laraia MT, Stuart G, **Morton WA**, Zealberg J. "Gastrointestinal symptoms in panic disorder." Presented at the 11th Annual Meeting of the American Anxiety Disorders Association, Chicago, Illinois, April 3–5, 1991.
10. Zealberg JJ, Lydiard RB, Ballenger JC, Laird LK, **Morton WA**. "Phenylacetic acid urinary output in patients with panic disorder, major depression and normal controls." Presented at the 144th Annual Meeting of the American Psychiatric Association, New Orleans, Louisiana, May 13–17, 1991.
11. Phillips JD, Malcolm R, **Morton WA**. "Comparison of bromocriptine, pergolide, and no medication in cocaine withdrawal." J Amer Acad Physicians Assist 5:359, 1992.
12. Fossey MD, Lydiard RB, Laraia MT, Zealberg JJ, **Morton WA**, Ballenger JC. "Predictions of placebo response in panic disorder." American Psychiatric Association 145th Annual Meeting, Washington, DC, May 2–7, 1992.
13. Emmanuel NP, Mintzer OB, Lydiard RB, Payeur R, Johnson M, **Morton WA**, Ballenger JC. "Personality disorders in generalized anxiety disorder." Presented at the 145th Annual Meeting of the American Psychiatric Association, Washington, DC, May 2–7, 1992.
14. Lydiard RB, **Morton A**, Zealberg J, Laraia M, Stuart G, Ballenger JC. "A placebo-controlled, double-blind study of desipramine in panic disorder." NCDEU Annual Meeting, Boca Raton, Florida, May 26–29, 1992.
15. Emmanuel NP, Mintzer OB, Johnson MR, **Morton A**, Lydiard RB, Ballenger JC.

- "Personality disorders in social phobia." Presented at 13th National Conference of Anxiety Disorders Association of America, Charleston, South Carolina, March 20, 1993.
16. Mendenhall AR, **Morton WA**. "Abecarnil: An experimental anxiolytic." The 24th Annual Southeastern Conference for Post-Graduate Pharmacy Education and Training. The University of Georgia, Athens, Georgia, April 17, 1993.
 17. Sonne SC, Brady KT, **Morton WA**. "Substance abuse and bipolar affective disorder." Presented at College on Problems of Drug Dependence, Toronto, Canada, June 14, 1993.
 18. Ware MR, Emmanuel NP, Czepowicz VD, Johnson MR, Kapp R, Walsh MD, Villarreal G, Rubey RN, Crawford M, **Morton WA**, Ballenger JC, Lydiard RB. "Self-reported sexual dysfunction in social phobic patients." Presented at Anxiety Disorders Association of America Annual Meeting, April 17, 1995.
 19. Johnson MR, Emmanuel N, Ware M, Mintzer O, Book S, Jones C, Kapp R, Crawford M, **Morton A**, Ballenger J, Lydiard RB. "Differentiating generalized from specific social phobia by responses on the Liebowitz Social Anxiety Scale." Presented at the Anxiety Disorders Association of America, Orlando, Florida, March 28–31, 1996.
 20. Devane CL, Ware MR, Emmanuel NP, Brawman-Mintzer O, Jones CR, **Morton WA**, Kapp R, Villarreal G, Lydiard RB. "The evaluation of the safety, efficacy, and physiological effects of fluvoxamine in social phobia." Presented at the 151st Annual Meeting of the American Psychiatric Association, New York, New York, May 5–9, 1996.
 21. Ware MR, Emmanuel NP, Johnson MR, Brawman-Mintzer O, Kapp R, Crawford-Harrison M, **Morton WA**, Lydiard RB. "Self-reported sexual dysfunction in anxiety disorder patients." Presented at the 151st Annual Meeting of the American Psychiatric Association, New York, New York, May 5–9, 1996.
 22. Johnson MR, Manazziti D, Lydiard RB, Mintzer OB, Emmanuel NP, Ware MR, **Morton WA**, Diamond BI. "Abnormal peripheral benzodiazepine receptors in social anxiety." Presented at the 151st Annual Meeting of the American Psychiatric Association, New York, New York, May 5–9, 1996.
 23. Johnson MR, Emmanuel NP, Brawman-Mintzer O, Book S, **Morton WA**, Ware M, Lydiard RB. "Decreased peripheral benzodiazepine receptor density in patients with generalized social phobia." Presented at the Annual Meeting of the Society for Biological Psychiatry, New York City, May 3, 1996.
 24. Ware MR, Emmanuel NP, Johnson MR, Brawman-Mintzer O, Kapp R, Crawford-Harrison M, **Morton WA**, Lydiard RB. "Self-reported sexual dysfunction in anxiety disorder patients." Presented at the New Clinical Drug Evaluation Unit (NCDEU) Annual Meeting, Boca Raton, Florida, May 30, 1996.
 25. Emmanuel NP, Cosby C, Brawman-Mintzer O, Johnson MR, Book S, **Morton WA**, Kapp R, Crawford M, Ballenger JC, Lydiard RB. "Sertraline in generalized anxiety

disorder: A case series." New research poster presented at the New Clinical Drug Evaluation Unit (NCDEU) Annual Meeting, Boca Raton, Florida, May 27–30, 1996.

26. Johnson MR, Emmanuel NP, Brawman-Mintzer O, **Morton WA**, Ware M, Crawford M, Kapp R, Czepowicz V, Villareal G, Book S, Lydiard RB, Ballenger JC, Marazziti DM. "Functional disability associated with comorbid generalized social phobia and major depressive disorder." Presented at the 37th Annual Meeting of the New Clinical Drug Evaluation Unit (NCDEU) Program, Boca Raton, Florida, May 29, 1997.
27. Emmanuel NP, Johnson MR, Villareal G, Cosby C, Czepowicz C, Mintzer O, Crawford M, Book S, **Morton A**, Rubey R, Kapp R, Jones C, Ballenger JC, Lydiard RB. "Imipramine in the treatment of social phobia: A double-blind study." Presented at the 36th Annual American College of Neuropsychopharmacology Meeting, Kanuela, Hawaii, December 8, 1997.
28. Emmanuel NP, Ware M, Cosby C, Crawford M, Kapp R, Mintzer O, Book S, **Morton A**, Jones C, Lydiard RB, Ballenger JC. "Concomitant use of herbal products in subjects applying for clinical trials." Presented at the 153rd Annual Meeting of the American Psychiatric Association, Toronto, Canada, May 20, 1998.
29. Emmanuel NP, Cosby C, Mintzer O, **Morton A**, Book S, Johnson M, Lorberbaum J, Crawford M, Kapp R, Jones C, Lydiard RB, Ballenger JC. "Open label treatment of social phobia using sustained-release bupropion." Presented at the New Clinical Drug Evaluation Unit (NCDEU) meeting, Boca Raton, Florida, June 11, 1998.
30. Johnson MR, Book S, Emmanuel N, **Morton A**, Crawford M, Kapp R, Cosby C, Brawman-Mintzer O, Lydiard RB. "Clinical research subjects with comorbid panic disorder and major depressive disorder: Comparisons with non-comorbid subjects." Presented at the New Clinical Drug Evaluation Unit (NCDEU) meeting, Boca Raton, Florida, June 11, 1998.
31. Brawman-Mintzer O, Lydiard RB, Kapp R, Emmanuel N, Johnson MR, **Morton A**, Ballenger JC. "Treatment response in patients with generalized anxiety disorder and a lifetime history of major depression." Presented at the New Clinical Drug Evaluation Unit (NCDEU) meeting, Boca Raton, Florida, June 12, 1998.
32. Lorberbaum JP, Emmanuel NP, Mintzer O, Kapp R, Crawford M, **Morton A**, Johnson MR, Book SW, Hamner M, Nahas Z, Arara GW, Ballenger JC, Lydiard RB, George MS. "Changes in anxiety after prefrontal r-TMS in patients with GAD." Presented at the Society of Biological Psychiatry annual meeting, Chicago, IL, May 11–13, 2000.
33. Lorberbaum JP, Mintzer O, Kapp R, Crawford M, **Morton A**, Johnson MR, Book SW, Hamner M, Nahas Z, Arara GW, Ballenger JC, Lydiard RB, George MS. "r-TMS in GAD subjects: Testing the valence theory of emotions." Presented at the 153rd American Psychiatric Association meeting, Chicago, IL, May 13–19, 2000.
34. Lorberbaum JP, George MS, Johnson MR, Brodrick PS, Emmanuel NP, Mintzer O,

Book SW, **Morton A**, Crawford-Cisa M, Kapp R, Hamner M, Ballenger JC, Lydiard RB. "Brain activity in social phobics undergoing a public speaking task." Poster presented at the 39th American College of Neuropharmacology (ACNP) meeting, San Juan, PR, December 12, 2000.

PAPER PRESENTATIONS:

1. "A Determination of the Effectiveness of a Pharmacist on Improving Drug Compliance in an Outpatient Setting" presented at the 10th Annual ASHP Midyear Meeting, Washington, D.C., December 1975.
2. "Clinical Pharmacy Services in the Medical Screening Clinic" presented at the 12th Annual ASHP Clinical Midyear Meeting, Atlanta, Georgia, December 1977.
3. "Problems in Prescribing Benzodiazepines" presented at 1978 National Drug Abuse Conference, Seattle, Washington, April 6, 1978.
4. "Evaluation of Pharmaceutical Services in a Medical Screening Clinic" presented at the 13th Annual ASHP Midyear Clinical Meeting, San Antonio, Texas, December 7, 1978.
5. "Salicylate Delirium" presented at the SIG on Psychopharmacy Practice of the 36th Annual ASHP Meeting, Anaheim, California, April 24, 1979.
6. "The Lithium Clinic: The Pharmacist's Role" presented at the 14th Annual ASHP Clinical Midyear Meeting, Las Vegas, Nevada, December 6, 1979.
7. "Determination of Lithium Nephrotoxicity by Non-Invasive Techniques" presented at the 15th Annual ASHP Clinical Midyear Meeting, San Francisco, California, December 8, 1980.
8. "Self-Management of Epilepsy" presented at the 16th Annual ASHP Clinical Midyear Meeting, New Orleans, Louisiana, December 10, 1981.
9. "Antihypertensive Drug Therapy in Alcohol Dependence: A Drug-Use Review in an Alcohol Treatment Facility" presented at the 17th Annual ASHP Clinical Midyear Meeting, Los Angeles, California, December 8, 1982.
10. "The Impaired Health Practitioner" presented at the 18th Annual ASHP Clinical Midyear Meeting, Atlanta, Georgia, December 6, 1983.
11. "Fluoxetine Associated Side Effects and Suicidality" presented at National Mental Health Association Scientific Symposium, Charleston, SC, August 11, 1992.
12. "Effects of Sertraline on Quality of Life: A Double-Blind Study" presented at the 28th Annual ASHP Midyear Meeting, Atlanta, GA, December 6-7, 1993.
13. "Effects of Sertraline on Quality of Life: A Double-Blind Study" presented at the Annual

American College of Physicians Midyear Meeting, Miami Beach, FL, April 23–24, 1994.

14. "Effects of Sertraline on Quality of Life: A Double-Blind Study" at the scientific program "Depression in Primary Care: Recognition and management" presented at the 22nd Annual Physician Assistant Conference, San Antonio, TX, May 25, 1994.
15. Robert S, **Morton WA**, Simpson K, Chumney E. "SSRI Loss of Effectiveness" presented at the 5th Annual International Meeting of the College of Psychiatric and Neurologic Pharmacists, Seattle, WA, April 18-21, 2002.

INVITED PRESENTATIONS:

1. "Use of Lithium in Affective Disorders," presented at the University of Kentucky School of Pharmacy, March 1976.
2. "Use and Abuse of Benzodiazepines," presented at the University of Florida School of Pharmacy, October, 1977.
3. "Drug Compliance in Epilepsy," presented at 1978 Region IV Symposium: Problems in Epilepsy, Charleston, SC, March 1, 1978.
4. "Anticonvulsant Medications," presented at 1st Annual Conference of the SC Epilepsy Association, Columbia, SC, November 4, 1978.
5. "Antiepileptic Medications", Panel Discussion, 2nd Annual Meeting of the SC Epilepsy Association, Columbia, SC, November 3, 1979.
6. "The Lithium Clinic," presented at MUSC, Department of Psychiatry Retreat, Kanuga, North Carolina, November 10, 1979.
7. "The Lithium Clinic: The Pharmacist's Role," presented at Charleston VA Medical Center, January 10, 1980.
8. "Anticonvulsant Medications," presented at Midland Epilepsy Association, Columbia, SC, January 24, 1980.
9. "Anticonvulsant Medications," presented at a seminar entitled "What You Should Know About Epilepsy", sponsored by Low Country Epilepsy Association and MUSC Epilepsy Project, Charleston, SC, February 12, 1980.
10. "Review of the Benzodiazepines," presented at the Mental Hygiene Clinic, Charleston VA Medical Center, February 18, 1980.
11. "Drugs of Abuse," presented at the Charleston Youth Bureau, Charleston, SC, March 18, 1980.

12. "Drugs Which Affect the Human Mind," presented at the Access School, Charleston, SC, April 16, 1980.
13. "Anticonvulsant Medications," presented at Charleston Police Department Inservice Training Program, May 1, 1980.
14. "Clinical Decision Making by the Pharmacist," presented at 1980 Annual SC Pharmaceutical Association Convention, Kiawah Island, SC June 16, 1980.
15. "Drug Therapy of Alcohol Withdrawal," presented at Annual Meeting of SC Pharmaceutical Association, Hilton Head, SC, June 22, 1981.
16. "Current Concepts of Antidepressant Drug Therapy," presented at SC AHEC Program, Summerville, SC, February 4, 1982.
17. "Psychiatric Drug Therapy," presented as a Clinical Consultation Session at the 39th ASHP Annual Meeting, Baltimore, Maryland, June 7, 1982.
18. "Antipsychosomatic and Antidepressant Drug Therapy," presented at SC AHEC Program, Beaufort, SC, March 15, 1983.
19. "Carbamazepine Use in Affective Disorders," presented at Charleston VA Medical Center Mental Hygiene Clinic, March 31, 1983.
20. "Withdrawal Syndromes" and "Medical Complications of Alcohol Use," presented at SC AHEC Program, "Alcoholism . . . Drug Abuse . . . New Concepts You Need to Know", Fenwick Hall Hospital, Johns Island, SC, May 27, 1983.
21. "Problem Solving in the Treatment of Bipolar Affective Disorders," presented at the Southeast Mental Health Pharmacists Meeting, Athens, Georgia, September 1983.
22. "Aspects Actual de Traitement de la Psychose Maniacodepressive: Recherches Cliniques Sur Les Effects de Tegretol," presented at Hospital Neurologique, Lyon, France, September 12, 1984.
23. "Withdrawal Syndromes and Detoxification," presented at workshop "Dealing with the Chemically Dependent," Fenwick Hall Hospital, Johns Island, SC, September 28, 1984.
24. "Recognition of the Problem: Signs and Symptoms," presented at School of Nurses Workshop on Substance Abuse at Fenwick Hall Hospital, Johns Island, SC, January 25, 1985.
25. "Issues in the Treatment of Cocaine Dependence," presented at Grand Rounds, MUSC Department of Psychiatry and Behavioral Sciences, Charleston, SC, March 12, 1985.
26. "Characteristics of Cocaine Addicts and Addictions." SC Conference on Cocaine, Columbia, SC, April 8, 1986.

27. "Psychopharmacology of Cocaine." SC Medical Association Annual Meeting, Charleston, SC, April 25, 1986.
28. "The Clonazepam Alternative: Adjunctive Treatment for Manic Agitation." MUSC Psychiatry Grand Rounds, Charleston, SC, June 24, 1986.
29. "Special Issues in the Treatment of Addictive Disease" including "Drug Withdrawal-General Principles," "Pharmacology of Cocaine and Amphetamines", "Pharmacology of Sedative-Hypnotic Drugs", "Pharmacology of Opioids and Cannabis," and "Medical Complications of Alcohol Use," presented at SC School of Alcohol and Drug Studies, Charleston, SC, July 27-August 1, 1986.
30. "Review of Agents Used to Treat Psychotic Illnesses," presented at SC Society of Hospital Pharmacists Summer Seminar, Columbia, SC, September 18, 1986.
31. "Pharmacology of Alcohol and Sedative Hypnotics," presented at Review Course in Substance Use Disorders, American Medical Society of Alcoholism and Other Drug Dependencies, Atlanta, Georgia, September 26, 1986.
32. "Extrapyramidal Side Effects and Compliance," presented at Charleston Area Mental Health Center, Charleston, SC, March 27, 1987.
33. "Complications of Alcohol Use," presented at SC School of Alcohol and Drug Studies, Rock Hill, SC, July 12-17, 1987.
34. "Special Issues in the Treatment of Addictive Disease" including "Drug Withdrawal-General Principles," "Pharmacology of Cocaine and Amphetamines," "Pharmacology of Sedative-Hypnotic Drugs," and "Medical Pharmacology of Widely Abused Prescription Drugs," presented at Southeastern Conference on Prescription Drug Abuse, Charleston, SC, October 7, 1987.
35. "Drug Utilization Review and Monitoring Parameters," presented at Southeast Mental Health Pharmacists Meeting, Athens, GA, October 26, 1987.
36. "Pharmacologic Management of the Dually Diagnosed," presented at Charleston County Substance Abuse Commission Seminar, "The Dually Diagnosed: What we need to know", Charleston, SC, October 13, 1988.
37. "Behavioral Effects of Alcohol and Drug Use," presented at Attorney and Judges Seminar "Understanding Alcohol and Drug Addiction, Fenwick Hall Hospital, Johns Island, SC, December 9, 1988.
38. "Clomipramine in the Treatment of Obsessive-Compulsive Disorders," presented at MUSC Psychiatry Residents Meeting, Charleston, SC, March 6, 1990.
39. "Current Protocols for the Treatment of Acute Alcohol Problems," presented to Medical Staff at Georgetown Memorial Hospital, Georgetown, SC, July 9, 1990.

40. "Dual Diagnosis in Substance Dependence: Treatment Alternatives," presented to Fenwick Hall Hospital Alumni Meeting, Johns Island, SC, May 23, 1991.
41. "Bipolar Affective Disorders: Complications in Treating Depression," Department of Psychiatry Clinical Research Section, Seminar, Charleston, SC, June 6, 1991.
42. "Pharmacologic Perspective," presented at Charleston Memorial Hospital Social Work Department Seminar. "Depression: A Holistic Approach to Treatment and Prevention", Charleston, SC, November 15, 1991.
43. "Clinical Research Protocols in Anxiety and Depressive Disorders," presented at Charleston Area Mental Health Center staff meeting, Charleston, SC, March 17, 1992.
44. "Pharmacological Advances in Treating Depression," Newberry Medical Society, Prosperity, SC, March 31, 1992.
45. "Pharmacological Treatment of Obesity," presented as part of the program "Obesity and Weight Control," SC Health Communications Network, Charleston, SC, September 8, 1992.
46. "New Antidepressant Medication," presented Medical University of SC Internal Medicine Residents Meeting, VA Medical Center, Charleston, SC, October 26, 1992.
47. "Psychiatric Drugs in the Year 2000." New Psychiatric Medications: Potential for Abuse," presented at Eighth Southeastern Conference on Prescription Drug Abuse, Charleston, SC, December 8, 1992.
48. "Clinical Research: The Pharmacist's Role," presented at 1993 Symposium of Mental Health, Mental Retardation of Substance Abuse Pharmacists, Athens, GA, February 3, 1993.
49. "Problems in the Treatment of Anxiety Disorders," presented at 1993 Symposium for Mental Health, Mental Retardation and Substance Abuse Pharmacists," Athens, GA, February 4, 1993.
50. "Running: Meeting Some Psychological Needs," presented at the Charleston Center for Athlete's Cooper River Bridge Running Camp, Charleston, SC, February 17, 1993.
51. "Pharmacology of Addictions," Workshop presented to health professionals at AHEC, Greenwood, SC, June 8, 1993.
52. "Psychiatric Drug Issues in Residential Care," presented at S.C. Association of Residential Care Homes Annual meeting, Charleston, SC, July 26, 1993.
53. "Abuse Potential of New Psychiatric Medication," presented at Fenwick Hall Hospital Annual Professional Staff Meeting, Johns Island, SC, August 10, 1993.

54. "Top Ten Psychiatric Drug Interactions," presented at "Depression in Primary Care," Wild Dunes, Isle of Palms, SC, January 15, 1994.
55. "Withdrawal Syndromes: Treatment of Alcohol and Other Substances of Abuse," presented at the 1994 Symposium for Mental Health, Mental Retardation, Substance Abuse Pharmacists, Athens, GA, February 2, 1994.
56. "Top Ten Psychiatric Drug Interactions," presented at Charleston Naval Hospital, Charleston, SC, February 16, 1994.
57. "Top Ten Psychiatric Drug Interactions," presented at Charleston VA Medical Center, Psychiatry Service, February 23, 1994.
58. "New Psychotropic Drugs and Their Potential for Abuse," presented at the Fourth Annual Update on Addiction Medicine, Greenwood, SC, February 26, 1994.
59. "Drug Interactions with Psychiatric Medication," presented at MUSC Annual Pharmacy Alumni Weekend, Charleston, SC, April 17, 1994.
60. "Top Ten Psychiatric Drug Interactions," presented at the Grand Strand Pharmaceutical Society, Myrtle Beach, SC, May 15, 1994.
61. "Post Marketing Surveillance and Pharmacoeconomic Studies: A Collaborative Proposal," presented at Psychopharmacy Research Meeting at the 34th New Clinical Drug Evaluation Unit Meeting, Marco Island, FL, May 31, 1994.
62. "Drug Interactions with Psychiatric Medications," presented at The Dilemma of Depression: Assessment and Management Issues in the Primary Care Setting," Charleston, SC, September 14, 1994.
63. "Drug Interactions with Psychiatric Medications," presented at Psychiatry Grand Rounds, Eisenhower Medical Center, Augusta, GA, September 29, 1994.
64. "Drug Interactions with Psychiatric Medications," presented at Grand Rounds, Medical College of Georgia, Department of Psychiatry, September 29, 1994.
65. "Drug Interactions with Psychotherapeutic Drugs," presented at the American Society of Consultant Pharmacists Post Graduate Geriatric Workshop, Charleston, SC, October 8, 1994.
66. "Myths Mama Told You — What Works and What Doesn't in Treatment of Substance Abuse," presented at the 15th National Conference of Mental Health, Developmental Disabilities, and Substance Abuse Pharmacists, Athens, GA, February 1, 1995.

67. "Substances of Abuse," presented at the 15th National Conference of Mental Health, Developmental Disabilities, and Substance Abuse Pharmacists, Athens, GA, February 2, 1995.
68. "Psychopharmacy Practice and Research," presented at MUSC Department of Hospital Pharmacy Practice and Administration Faculty Seminar, Charleston, SC, April 20, 1995.
69. "Anxiety in the 1990's: A Look at Panic Disorder," presented to Palmetto Dental Society, Columbia, SC, April 26, 1995.
70. "Depot Neuroleptic Therapy: An Underutilized Option," presented at Psychiatric/Mental Health Nursing Conference, Columbia, SC, October 12, 1995.
71. "Update on Anxiety Disorders," presented at the SCSHP 1996 Fall Seminar: Psychopharmacy, Columbia, SC, September 13, 1996.
72. "Anxiety Disorders: Review of Treatment," presented at the Clinical Midyear Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, October 7, 1996.
73. "Schizophrenia and Antipsychotic Medications," presented at the Clinical Midyear Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, October 7, 1996.
74. "Psychopharmacological Treatment of Personality Disorders, Developmental Disorder, and Eating Disorders," presented at the Clinical Midyear Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, October 7, 1996.
75. "Case Presentations in Anxiety Disorders," presented at the Clinical Midyear Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, October 8, 1996.
76. "Substances of Abuse," presented at the Clinical Midyear Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, October 8, 1996.
77. "Case Presentations in Mood Disorders," presented at the Clinical Midyear Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, October 8, 1996.
78. "Impulse Control Disorders," presented at the Clinical Midyear Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, October 9, 1996.
79. "Case Presentations in Schizophrenia and Bipolar Disorders," presented at the Clinical Midyear Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, October 9, 1996.
80. "Use of Antidepressants in Anxiety Disorders," presented at MHAL Training Institute Workshop, Charleston, SC, October 29, 1996.

81. "Why Practitioners Ignore Anxiety Disorders: Ideas for Providing Successful Treatment," presented at the 17th National Symposium for Psychiatric Pharmacy Practitioners, Athens, GA, February 5, 1997.
82. "Medicines for the Mind: How Drugs Affect Your Thinking, Feeling, and Behavior." "Ask the Expert" series, Medical University of South Carolina Office of Public Education and Institute of Psychiatry, Charleston, SC, April 9, 1997.
83. "Reading and Evaluating the Psychopharmacologic Literature," presented at the 18th National Symposium of Mental Health/Developmental Disabilities/Substance Abuse Practitioners, Athens, GA, February 4, 1998.
84. "Running 101—Use of Running in Stress Management," presented at the 18th National Symposium of Mental Health/Developmental Disabilities/Substance Abuse Practitioners, Athens, GA, February 4, 1998.
85. "Stress Management," presented at the 18th National Symposium of Mental Health/Developmental Disabilities/Substance Abuse Practitioners, Athens, GA, February 5, 1998.
86. "New Pharmacological Treatments for Anxiety and Depression: What's Reasonable to Expect," presented at the MUSC Institute of Psychiatry Breakfast Rounds, Charleston, SC, May 29, 1998.
87. "Treatment of Anxiety," presented at Psychotropic Medication and the Health Care Professional, Charleston, SC, August 10, 1998.
88. "Medicines of the Mind," presented at the Mind Your Health program, MUSC Institute of Psychiatry, Charleston, SC, November 17, 1998.
89. "The Challenge of Treating Depression in Women," presented at the 5th Annual Advanced Practice Nurses' Conference, Charleston, SC, February 4, 1999.
90. "Running and Mental Health: A Workshop for Those Just Starting Out Running," presented at the 19th National Symposium of Mental Health/Developmental Disabilities/Substance Abuse Practitioners, Athens, GA, February 9, 1999.
91. "Cocaine Intoxication: Why People Do What They Do," presented at the 19th National Symposium of Mental Health/Developmental Disabilities/Substance Abuse Practitioners, Athens, GA, February 10, 1999.
92. "Assessment Scales in Psychopharmacy," presented at the 19th National Symposium of Mental Health/Developmental Disabilities/Substance Abuse Practitioners, Athens, GA, February 11, 1999.

93. "Treatment of Panic Disorder in the Medically Ill Patient," presented at the 2nd Annual International Meeting, College of Psychiatric and Neurologic Pharmacists, Lake Tahoe, NV, March 26, 1999.
94. "Pharmacologic Treatment of Depression: Where to Start," presented at "Making a Difference in Treating Depression," Charleston, SC, November 21, 1999.
95. "Why People Don't Take Their Medication," presented at "Making a Difference in Treating Depression," Charleston, SC, November 21, 1999.
96. "Assessment Tools: MSE and Rating Scales," presented at "Making a Difference in Treating Depression," Charleston, SC, November 21, 1999.
97. "Antidepressants: Essentials of MAOIs and TCADs," presented at "Making a Difference in Treating Depression," Charleston, SC, November 21, 1999.
98. "Adverse Events and Their Treatment," presented at "Making a Difference in Treating Depression," Charleston, SC, November 21, 1999.
99. "Are Any of Your Patients Depressed or Anxious?," presented at "Psychotherapeutics for Clinicians," MUSC College of Nursing," Charleston, SC, December 3, 1999.
100. "Medication Noncompliance: Why Patients Don't Take Their Medications," presented at 20th National Symposium for Psychiatric Practitioners, Athens, GA February 22, 2000.
101. "Case Studies: Adverse Drug Reactions or Events," presented at 20th National Symposium for Psychiatric Practitioners, Athens, GA, February 22, 2000.
102. "What is a Medication Response?" presented at the 21st National Symposium for Psychiatric Practitioners, Athens, GA, February 7, 2001.
103. "Basic Principles of Treating Addiction", presented at the 21st National Symposium for Psychiatric Practitioners, Athens, GA, February 8, 2001.
104. "Treatment of Addiction". presented at the MUSC Center for Drug and Alcohol Program Inpatient Staff, Charleston, SC, April 24, 2001.
105. "Catching Up with Science: Basic Treatment of Addiction" MUSC Health Communications Network Presentation of Pharmacy Update 2001, Charleston, SC, June 12, 2001.
106. "Basic treatment of Addictions" presented at Regional Meeting of the SC Academy of Professional Psychologists, Charleston, SC, June 27, 2001.
107. "Basics of Psychopharmacology" presented at Southeastern Region Therapeutic Recreation Symposium, Charleston, SC, July 20, 2001.

108. "Medical and Legal Implications of a New Drug Culture" presented at Judges and Attorneys Substance Abuse and Ethics Seminar, Charleston, SC, December 7, 2001
109. "Psychiatric Drug Therapy for the Non-Pharmacist" presented at the 22nd National Symposium for Psychiatric Practitioners, Athens, GA, February 5, 2002.
110. "Case Studies: Drug Dependency Disorders" presented at the 22nd National Symposium for Psychiatric Practitioners, Athens, GA, February 6, 2002.
111. "Catching Up With Science: Why We Don't Adequately Treat Addictions": presented at the 22nd National Symposium for Psychiatric Practitioners, Athens, GA, February 7, 2002.
112. Pharmacology Institute: "The Best Is Yet to Come": workshops on "What is a Medication Response?", "Update: New Psychiatric Medications", and "Why We Don't Adequately Treat Addictions" presented at SC National Association of Social Workers Spring Symposium, Columbia, SC, March 6, 2002.
113. "The Course of Addiction" presented at the MUH Department of Pharmacy Clinical Staff Meeting, Charleston, SC, May 21, 2002.
114. "The Course of Addiction" presented at the MUH Department of Pharmacy Clinical Staff Meeting, Charleston, SC, and May 21, 2002.
115. "Investigating, Understanding, and Explaining Substance Abuse" presented at NC Academy of Trial Lawyers Seminar: "Making the Case for Life: V", Raleigh, NC, September 28, 2002.
116. "Substance Use in Criminal Defendants" a workshop presented at the 8th Biennial Forensic Forum: Best Practices: Collaboration between Human Service and Criminal Justice Systems, Columbia, SC, October 24, 2002.
117. "Understanding Antipsychotic Medications and New Issues in Medications for Old Illnesses" presented at 3rd National Seminar on Mental Health and the Criminal Law, Atlanta, GA, November 2, 2002.
118. "High Profile Drugs: Use" presented at Judges and Attorneys Substance Abuse and Ethics Seminar, Charleston, SC, December 6, 2002.
119. "What to Expect from Medication when Doing Psychotherapy" presented at the 23rd National Symposium for Psychiatric Practitioners, Athens, GA, February 5, 2003.
120. "Addictions and Legal Issues: So What?" presented at the 23rd National Symposium for Psychiatric Practitioners, Athens, GA, February 6, 2003.
121. "Addictions: Controversial Legal and Treatment Issues" Presented to USC-Beaufort Department of Psychology, Beaufort, SC, April 17, 2003.

122. "Contempt and Hate: Dealing with Strong Feelings for Patients" presented at the 24th National Symposium for Psychiatric Practitioners, Athens, GA, February 3, 2004.
123. "Who Cares?: Treatment of Generalized and Social Anxiety Disorders" presented at the 7th College of Psychiatric and Neurologic Pharmacists Annual meeting, Chicago, IL, April 25, 2004.
124. "Treatment of Addictions" presented at the IOP Pharmacy Inservice Program, Charleston, SC, May 27, 2004.
125. "Contempt and Hate: Dealing with Strong Feelings for Patients with Substance Use Disorders" presented at the MUSC Department of Pharmacy Services Clinical Staff Meeting, Charleston, SC, Jul 27, 2004.
126. "Psychopharmacology Legal Issues: Basic Treatment of Addictions, The Effects of Methamphetamine on the Brain, Pharmacokinetics, Blood Levels and the Brain, and Blood Alcohol Levels" presented at Georgia Public Defender Staff In-service, Atlanta, GA January 30, 2006.
127. "The Interface of Psychopharmacology and Addictive Disorders" presented at the 26th National Symposium for Psychiatric Practitioners, Athens, GA, February 7, 2006.
128. "Contempt and Hate: Strong Feelings for Patients" presented at the MUSC Department of Pharmacy Residents RITE meeting, Charleston, SC, Sept 15, 2006.
129. "The Positive Drug Test Report" presented at the SC Association of Criminal Defense Lawyers Annual Seminar, Columbia, SC, November 5, 2010.

TEACHING EXPERIENCE:

Advanced Clinical Pharmacy, Medical University of SC; Preceptor for Pharm.D. candidates on the Psychiatry Rotation, 1977–2004.

Advanced Therapeutics, Medical University of SC; Module Coordinator; Group Leader, Lecture for Psychiatric Pharmacy Practice, Pharm.D. students, 1980–2004.

Substance Abuse: A Pharmacist's Perspective, Medical University of SC; Group Moderator, Pharm.D. students, 1999–2003.

Psychology Internship Seminar Program, Medical University of SC; Provided seminars on the following topics: Introduction to Psychopharmacology, Use of Major Tranquilizers, Antidepressant Medication, Use of Lithium in Affective Disorders, Drug Induced Psychiatric Disorders, 1979–1990, 1994, 2002-2003.

Psychopharmacology Unit, Medical University of SC; Clinical Supervisor to 3rd and 4th year Psychiatry Residents and 1st year Psychopharmacy Practice Residents, Didactic

presentations, 1984–2001.

Clinical Pharmacy I, Medical University of SC; Didactic presentation includes: Antipsychotic medication, Antidepressant medication, Lithium, Anti-anxiety agents, Schizophrenia, Affective Disorders, Anxiety, and Substance Abuse Disorders, 1977–1999.

Clinical Pharmacy II, Medical University of SC; Preceptor for fifth year B.S. pharmacy students on the Psychiatry Rotation. Also includes didactic presentations, 1976–1999.

Doctoral Project, Medical University of SC; Directed project for fifteen Pharm.D. candidates, 1978–1995.

Behavioral Sciences, Medical University of SC; Coordinator of Behavioral Sciences course for 1st year Pharm.D. candidates, co-leader in seminars involving guest speakers, 1978–1987.

Supervisor, Medical University of SC; for the Psychiatric Pharmacy Practice Resident, for the 3rd and 4th year Psychiatric residents in a medication clinic, 1982–1987.

Required Psychiatry Clerkship, Medical University of SC; Preceptor for medical students on the Adult Inpatient Psychiatric Unit at MUSC, VA Mental Hygiene Clinic and VA Adult Inpatient Psychiatric Unit — emphasis on applied psychopharmacology and therapeutics, 1978–1988.

Fundamentals of Drug Information, Medical University of SC; the following lectures were presented to 1st year Pharm.D. students: How to Present an Oral Presentation, Effective Use of Teaching Materials, and Methods of Evaluation, 1976–1977.

Health Sciences Teaching Course, completed a two-week course in Health Science Teaching while at the University of California. This course was designed to improve teaching techniques, 1975.

Clinical Pharmacy 130, University of California; emphasis on the interpretation and clinical significance of laboratory tests plus the medical management of problems involving the cardiovascular system and the kidneys. Experience in leading conference groups, developing test materials, and evaluating student performance for 3rd year pharmacy students, 1975–1976.

Clinical Pharmacy 135, University of California; Served as a preceptor for 3rd and 4th year students during their inpatient and outpatient rotations; responsibilities included the instruction and evaluation of these students, 1975–1976.

Clinical Pharmacy 132, University of California; Presented the following lectures: Treatment of Affective Disorders with Lithium, Treatment of Affective Disorders with Tricyclic Antidepressants, 1976.

Pharmaceutical Preparations Laboratory; University of Tennessee; Introduction to pharmaceutical preparations and dispensing for 3rd year pharmacy students. Served as a laboratory instructor and was responsible for providing practical instruction and evaluating student's performance in the laboratory, 1974.

ADMINISTRATIVE EXPERIENCE:

Coordinator for the Clinical Pharmacy Program, 5th year B.S. Pharmacy Students at the Medical University of South Carolina during 1979–1982, 1988–1999.

Coordinator for the Behavioral Science Course, for the 1st Year Doctor of Pharmacy students during 1978–1987.

Director of Education and Training, Department of Clinical and Institutional Pharmacy, May 1983-July 1984.

Coordinator for the Doctor of Pharmacy Program, Institutional Tract, April 1983-July 1984.

Hot Springs Health Program, Initiated and provided clinical pharmacy services for three rural community clinics; responsible for the total operation of these services, June 1973 – May 1974.

AWARDS:

MUSC Applause Program, February, 1997; September, 2000

College of Pharmacy Research Productivity Award, 1993–1994, 1994–1995

Department of Hospital Pharmacy Practice and Administration Research Productivity Award, 1993–1994, 1994–1995

COMMITTEE EXPERIENCE:

MUSC College of Pharmacy Admissions Committee 2002-2004.

MUSC College of Pharmacy - Appointments, Promotion and Tenure Committee, 2000–2004.

Program Planning Committee, National Meeting of Mental Health/Developmental Disabilities and Substance Abuse Pharmacists, 1987–2004.

MUSC Continuing Education Committee, 1999–2002, Chairperson.

MUSC Honorary Degree Committee, 1998–2002.

MUSC College of Pharmacy, ACPE Accreditations Committee, Chairperson, 2000–2001.

Department of Pharmacy Practice and Promotion and Tenure Committee, 1988–94, 1996–2001.

MUSC College of Pharmacy Assessment and Curriculum Committee, 1997–2001, Chairperson.

ASHP Foundation Fellowship Program Selection Panel for Psychiatric Drug Therapy, 1996

Doctor of Pharmacy Advisory Committee, MUSC College of Pharmacy, 1979–85, 1991–96.

Program Planning Committee, Midyear Clinical Symposium for Psychiatric Pharmacy Practitioners, 1996.

MUSC Faculty Hearing Committee, 1988–93, 1996.

Department of Hospital Pharmacy Practice and Administration Pharmacy Residency and Fellowship Committee, 1984–85, 1987–95.

MUSC Student Life Council, 1988–93.

Served as a member of the ASHP Residency Accreditation Survey Team in Psychopharmacy Practice.

Scholastic Standing Committee, Medical University of SC College of Pharmacy, 1987–92.

Department of Clinical and Institutional Pharmacy Curriculum Committee, 1985–87.

Department of Clinical and Institutional Pharmacy Clinical Services Committee, 1985–87.

Department of Clinical and Institutional Pharmacy Research Committee, 1982–85.

Education and Training Working Group, Special Interest Group on Psychopharmacy Practice, American Society of Hospital Pharmacists, 1980–84.

Admissions Committee, MUSC College of Pharmacy, 1978–83.

Medical Records Subcommittee on Psychiatric Medical Records, Charleston VA Medical Center, 1979.

Advisory Panel for Awards, American Society of Hospital Pharmacists Education and Research Foundation, 1978–80.

Subcommittee for Accreditation Standards for Specialty Residencies in Psychiatric Pharmacy, American Society of Hospital Pharmacists, Special Interest Group on Psychopharmacy Practice, 1978–79.

RESEARCH INTERESTS:

Treatment of substance abuse disorders.

Psychopharmacological treatment of affective disorders and anxiety disorders.

Patient education and patient self-management of chronic psychiatric disorders.

Drug utilization of psychiatric medication.

RESEARCH METHODOLOGY TRAINING:

1986– 2004 Ongoing M.D. supervision via preceptor assignment

1991– 2002 Clinical research staff training: monthly inter-rater reliability meetings

Proficient use of the following assessment scales (not inclusive):

Structured Clinical Interview for Diagnosis (SCID)
Hamilton Depression Rating Scale (HAM-D)
Montgomery and Asberg Depression Rating Scale (MADRS)
Hamilton Anxiety Rating Scale (HAM-A)
Beck Depression Inventory (BDI)
Yale-Brown Obsessive Compulsive Scale (Y-BOCS)
Liebowitz Social Phobia Scale (LSPS)
Brief Social Phobia Scale (BSPS)
Brief Psychiatric Rating Scale (BPRS)
Abnormal Involuntary Movements Scale (AIMS)
Young Mania Rating Scale
Rickels Symptom Checklist
Physicians Withdrawal Checklist

RESEARCH EXPERIENCE:

1. 1977 – 1980 Co-Investigator, HEW Grant 50-P-20682, "Antiepileptic Drug Compliance in an Outpatient Seizure Program."
2. 1986 – 1988 Co-Investigator, Kali-Duphar Laboratories, "Fluvoxamine in the treatment of Depression: a Multicenter Double-Blind Placebo-Controlled Comparison with Imipramine in Outpatients."
3. 1986 – 1988 Co-Investigator, "Thyroid Function in Depressed Outpatients Receiving Fluvoxamine, Imipramine, and Placebo."
4. 1987 – 1989 Principal Investigator, The Upjohn Co., "Evaluation of the Long Term Use of Alprazolam in Panic Disorder."
5. 1988 – 1990 Co-Investigator, Merrell-Dow, Inc., "Desipramine vs. Placebo: Efficacy in Panic Disorder."

6. 1988 – 1990 Co-Investigator, Pfizer, Inc., "Sertraline vs. Placebo in the Treatment of Obsessive-Compulsive Disorder.
7. 1988 – 1989 Co-Investigator, Pfizer, Inc., "SM-3997 in the Treatment of Generalized Anxiety Disorder."
8. 1989 – 1993 Principal Investigator, The Upjohn Co., "Pharmacoeconomic Study of Patients with Irritable Bowel Syndrome and Anxiety Disorders."
9. 1989 – 1990 Co-Investigator, Sandoz, Inc., "ZK112-119 Alprazolam and Placebo in the Treatment of Panic Disorder."
10. 1989 – 1990 Co-Investigator, Sandoz, Inc., "ZK112-119 Alprazolam and Placebo in the Treatment of Generalized Anxiety Disorder."
11. 1989 – 1996 Co-Investigator, NIAAA (RO1AA07825-01A1), "Imipramine Treatment of Alcoholics with Panic Disorder."
12. 1990 – 1991 Co-Investigator, Searle Inc., "Efficacy and Safety of SC-48274 0.25, 1 mg and 5 mg Twice Daily in Patients with Generalized Anxiety Disorder."
13. 1990 - 1991 Co-Investigator, Upjohn Co., "Evaluation of Xanax SR 4 mg, 6 mg, and Placebo in the Treatment of Panic Disorder with Agoraphobia."
14. 1990 -1992 Co-Investigator, Wyeth-Ayerst, "Venlafaxine vs Placebo in Panic Disorder."
15. 1990 – 1992 Co-Investigator, Pfizer Inc., "Sertraline, Amitriptyline, and Placebo in Outpatients with Depression."
16. 1990 – 1993 Co-Investigator, Pfizer Inc., "Sertraline, Clomipramine, and Placebo in Outpatients with Obsessive Compulsive Disorder."
17. 1990 – 1992 Co-Investigator, Pfizer Inc., "Follow-up Study of Sertraline in Outpatients with Obsessive Compulsive Disorder."
18. 1990 – 1992 Co-Investigator, Glaxo Inc., "Ondansetron vs. Diazepam and Placebo in the Treatment of Generalized Anxiety Disorder."
19. 1991 – 1993 Co-Investigator, Roche, "Librax vs. Librium, Quarzan, and Placebo in IBS"
20. 1991 – 1992 Co-Investigator, Mead Johnson Labs, "Nefazodone in Depression."
21. 1992 – 1993 Co-investigator, Glaxo Inc., "A Double Blind, Placebo-Controlled Study of the Safety and Efficacy of Ondansetron vs Placebo in the Treatment of

Social Phobia."

22. 1992 – 1993 Co-investigator, Hoffman-La Roche. "Double Blind Dose Response Study of Determining the Safety and Efficacy of Fixed Dosed of Moclobemide in Patients with Panic Disorder with or without Agoraphobia."
23. 1992 – 1993 Co-investigator, Hoffman-La Roche. "Double Blind Dose Response Study to determine the Safety and Efficacy of Fixed Doses of Moclobomide in patients with Social Phobia."
24. 1992 – 1993 Co-investigator, Sandoz. "A Prospective, Randomized, Double Blind Multicenter Parallel Group Comparison of the Efficacy, Safety, and Tolerance During Short and Long Term Treatment and the Effects of Medication Discontinuation After Long Term Treatment with Abecarnil and Alprazolam in Patients with Generalized Anxiety Disorder."
25. 1992 – 1995 Co-investigator, "Sleep Deprivation Study in Patients with Panic Disorder, Obsessive-Compulsive Disorder, Generalized Anxiety Disorder, Depression, and Normal Controls."
26. 1993 – 1995 Co-investigator, Solvay Pharmaceuticals, "Fluvoxamine in The Treatment of Depression: A Double-Blind Multicenter Comparison with Sertraline in outpatients."
27. 1993 – 1994 Co-investigator, SmithKline Beecham Pharmaceuticals, "Paroxetine versus Clomipramine and Placebo in The Treatment of Obsessive Compulsive Disorder."
28. 1993 – 1994 Co-investigator, Eli Lilly and Company. "Amesergide versus Fluoxetine versus Placebo in Major Depressive Disorder."
29. 1993 – 1995 Co-investigator, Pfizer, Inc., "Double-Blind parallel comparison of Sertraline and Desipramine in Outpatients with Concurrent Major Depression and Obsessive Compulsive Disorder."
30. 1994 – 1994 Co-investigator, Glaxo, Inc., "A Double-Blind Placebo-controlled Escalation Study of the Safety and Efficacy of Oral Ondansetron in the Treatment of Patients With Panic Disorder."
31. 1994 – 1995 Co-investigator, Bristol-Myers-Squibb, "Open-Label Study of Serzone (Nefazodone) in the Management of Patients with Symptoms of Depression in General Psychiatric Practices."
32. 1994 – 1994 Co-investigator, Upjohn Co., "Deracyn (adinazepam) in the Treatment of Social Phobia."

33. 1994 – 1996 Co-investigator, Pfizer, Inc., "Sertraline Treatment Followed by a Double-Blind Comparison of Sertraline and Placebo in the Prevention of Relapse in Outpatients with Obsessive Compulsive Disorder."
34. 1994 – 1995 Co-investigator, Parke-Davis, "A Double-Blind, Placebo-Controlled, Six-Week Study of Oral CI-988 in Patients with Panic Disorder."
35. 1994 – 1996 Co-investigator, Eli-Lilly and Company, "Fluoxetine vs. Placebo in Panic Disorder."
36. 1995 – 1996 Co-investigator, Organon, Inc., "ORG-4428 v. Fluoxetine v. Placebo in Major Depression."
37. 1995 – 1997 Co-investigator, Pfizer, Inc., "One-year Open-label Extension Study of Sertraline Followed by a Double-blind Comparison of Sertraline and Placebo in Outpatients with Panic Disorder."
38. 1995 – 1996 Co-investigator, Solvay Pharmaceuticals, "Flesinoxan in the Treatment of Generalized Anxiety Disorder."
39. 1995 – 1995 Co-investigator, Solvay Pharmaceuticals, "Evaluation of Fluvoxamine in Social Phobia."
40. 1995 – 1995 Co-investigator, Glaxo, Inc., "Ondansetron v. Placebo in Panic Disorder."
41. 1995 – 1996 Co-investigator, SKB Pharmaceuticals, "Paroxetine v. Placebo in Social Phobia."
42. 1995 – 1996 Co-investigator, SKB Pharmaceuticals, "Paroxetine Open Label Extension in Social Phobia."
43. 1995 – 1996 Co-investigator, Upjohn Company, "Pramipexole v. Fluoxetine v. Placebo in the Treatment of Patients with Major Depression."
44. 1995 – 2000 Co-investigator, NIMH Grant, "Imipramine vs. Phenelzine vs. Paroxetine vs. Placebo in Panic Disorder with Depression."
45. 1996 – 1997 Co-investigator, Wyeth-Ayerst, "Venlafaxine vs. Placebo in Generalized Anxiety Disorder."
46. 1996 – 1998 Co-investigator, Parke-Davis Pharmaceutical Research, "Placebo-Controlled Trial of Gabapentin in Patients with Panic Disorder."
47. 1996 – 1998 Co-investigator, Wellcome Foundation, "A Multicenter, Double-blind, Placebo-controlled, Fixed-dose Evaluation of the Safety and Efficacy of Lamictal (lamotrigine) in the Treatment of a Major Depressive Episode in

Patients Suffering from Bipolar Disorder."

48. 1997 – 1998 Co-investigator, Interneuron Pharmaceuticals, Inc., "Placebo-Controlled Parallel Group Trials of Three Doses of Pagaclone in Patients with DSM-IV Panic Disorder."
49. 1997 – 1998 Co-investigator, Smith-Kline Beecham Pharmaceuticals, Inc., "A Double-Blind, Placebo-Controlled, Flexible Dosing Trial to Evaluate the Efficacy of Modified Release Paroxetine in the Treatment of Panic Disorder."
50. 1997 – 1998 Co-investigator, Smith-Kline Beecham Pharmaceuticals, Inc., "A Randomized, Double-Blind, Fixed Dose Comparison of 20, 40, and 60 mg Daily of Paroxetine and Placebo in the Treatment of Generalized Social Phobia."
51. 1997 – 1998 Co-investigator, Smith-Kline Beecham Pharmaceuticals, Inc., "A Double-Blind, Placebo-Controlled, Trial to Evaluate the Clinical Effects of Immediate Release Paroxetine and Modified Release Paroxetine in the Treatment of Major Depression."
52. 1997 – 1998 Co-investigator, Bristol Myers Squibb Pharmaceuticals, "A Double-Blind, Randomized Trial of Three Fixed Doses of Transdermal Bupirone Compared to Placebo in the Treatment of Anxious Outpatients."
53. 1998 – 1999 Co-investigator, Bristol Myers Squibb Pharmaceuticals, "Flexible-Dose Trial of Nefazodone HCl and Placebo in the Treatment of Subjects with Panic Disorder."
54. 1998 – 1999 Co-investigator, Forest Laboratories, "Open-Label Evaluation of Citalopram in Outpatients with Depression."
55. 1998 – 1999 Co-investigator, Merck and Co., "Double-Blind Acute and Extension Study of MK-9869 vs Fluoxetine and Placebo in Treatment of Outpatients with Major Depressive Disorder."
56. 1998 – 1999 Co-investigator, Glaxo-Wellcome, "Placebo-Controlled Study of Bupropion HCl Sustained Release for the Prevention of Relapse/Recurrence in Subjects Whose Depression Responded to Treatment with Wellbutrin SR."
57. 1998 – 1999 Co-investigator, Parke-Davis Pharmaceutical Research, "Pregabalin in Social Phobia."
58. 1998 – 2000 Co-investigator, Glaxo-Wellcome, "Placebo-Controlled, Randomized, Fixed-Dose Evaluation of Lamotrigine in Long-Term Prevention of Relapse and Recurrence of Depression and/or Mania in Patients with Bipolar I Disorder."

59. 1999 –2000 Co-investigator, Novartis, "Randomized, Double-Blind, Placebo-Controlled Trial to Evaluate 4 Doses of NKP608A in Patients with Social Phobia."
60. 1999 – 2000 Co-investigator, Novartis, "Randomized, Double-Blind, Active and Placebo-Controlled Trial of NKP608A in Patients with Moderate to Severe Major Depressive Disorder."
61. 1999 – 2000 Co-investigator, Synthelabo Research, "Comparison of Befloxatone 2.5 mg vs Placebo in Outpatients with Moderate to Severe Major Depressive Disorder."
62. 1999 – 2001 Co-investigator, SmithKline Beecham, "Double-Blind, Placebo-Controlled Flexible Dosage trial to Evaluate Paroxetine in Patients with Generalized Anxiety Disorder."
63. 2000 – 2001 Co-investigator, Wyeth-Ayerst Research, "Venlafaxine ER and Placebo in Outpatients with Generalized Social Phobia."
64. 2000 – 2001 Co-investigator, Clinical Innovation Group, "Efficacy and Tolerability of Sertraline in Generalized Anxiety Disorder."
65. 2000 – 2001 Co-investigator, Bristol Myers Squibb, "Nefazodone vs. Venlafaxine in Outpatients with Generalized Anxiety Disorder."
66. 2000 – 2001 Co-investigator, Glaxo-Wellcome Inc., "Safety and Effectiveness of Bupropion SR in Panic Disorder."
67. 2000 – 2001 Co-investigator, Forest Laboratories, Inc., "Safety and Efficacy of Lu 26-054, Citalopram and Placebo in the Treatment of Panic Disorder."
68. 2000 – 2001 Co-investigator, Biovail Laboratories, "Safety and Efficacy of Buspirone Extended Release vs Placebo in the Treatment of Generalized Anxiety Disorder."
69. 2000 – 2001 Co-investigator, Pharmacia and Upjohn, "Reboxatone vs Placebo in Treatment of Major Depressive Disorder Resistant to Fluoxetine."
70. 2000 – 2001 Co-investigator, Eli Lilly and Co., "Long Term, Open Label Treatment with R-Fluoxetine HCL in Major Depressive Disorder."
71. 2001 - 2004 Co-investigator, NIDA, "Double-Blind, Placebo-Controlled Trial of Carbergoline for the Treatment of Cocaine Dependence."
72. 2001 - 2004 Co-investigator, NIDA, "Double-Blind, Placebo-Controlled Trial of Selegiline Transdermal System for the Treatment of Cocaine

dependence.”

73. 2003 - 2004 Co-investigator, NIH, “Methylphenidate-Ethanol Interaction in ADHD and Coabuse.”

PROFESSIONAL ORGANIZATIONS:

American Society of Health Systems Pharmacists

College of Psychiatric and Neurologic Pharmacists

Exhibit 2

DERRICK O'NEAL MASON

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FERGUSON:

Q State your name.

A Derrick O'Neal Mason.

Q How old are you, Derrick?

A 20.

Q Do you understand why you are here today?

A Yes.

Q And you understand everything that's taken place?

A I do.

Q Derrick, do you remember March -- I guess March 27th, 1994?

A I remember that day.

Q How much did you drink that day?

A If I can recall, I would say about a six-pack.

Q Did you use any drugs on that day?

A Yes.

Q What did you use?

A Marijuana.

Q Do you know how much?

A What we smoked, we called them blunts.

They are simply Cuban tobacco cigar with the tobacco emptied out and stuffed with marijuana.

Q How big are those, Derrick, if you know?

A I would say a Cuban cigar is rather long, so just estimating, about this long. About maybe as round as a highlighter.

Q How many did you say that you had that day?

A My recollection would be, because it was an every-evening event, three, maybe four, you know, you couldn't handle any more.

Q And you had those the same day you had this alcohol?

A Yes.

Q Derrick, you understand how serious what you did is, you understand that?

A Yes, I do.

Q Do you understand what it did to this family?

A Definitely. Definitely.

Q Have you thought about that since you

were arrested?

A I have been in jail about a year and three months now, and there's not a day that goes by that I don't wake up and think about it.

Q Do you understand, though, what you put the mother through?

A Even more so now that I have seen her here in court, even more so.

Q Do you have remorse for that?

A Great. Great remorse. I haven't had a chance to really express a whole lot of feelings because, you know, in jail you don't really talk to people about your case, but the remorse is -- you know, is overwhelming at times. I have wrote letters, even our group discussions upstairs in the jail, the part that I can convey to fellow inmates, I do. And the part that always overwhelms me is when I come to the part talking about Ms. Cagle's mother. Because I realize how close I am with my own mother.

Q Derrick, would you change what you did on that day if you could?

MR. MORGAN: Judge, I'm going to object.

THE COURT: Sustained.

MR. MORGAN: That's not a --

THE COURT: Sustained.

Q Derrick, has there been a day go by that you have not thought about this?

A Not a day.

Q And you understand that this jury makes the decision on whether you live or not?

A I understand that now, yes.

Q And you have understood that for a good while now?

A Yes, since I have been incarcerated, I have understood it was going to be a jury.

Q Derrick, do you remember everything that took place the day of Ms. Cagle's death?

A Not in detail, scattery. I have been asked that question so many times. I don't have a recollection.

Q But you remember a good bit of it?

A A good bit. A good bit of the day's events.

Q And you remember enough to realize how bad what you did was?

A Sure, most definitely.

Q Derrick, do you believe if this jury

decided for you, basically, to serve life imprisonment without parole, do you think you could contribute in the penitentiary?

MR. MORGAN: Judge, I'm going to object to that. I don't know where he is going with it, but if he wants to ask something that pertains to mitigation, that will help this jury in deciding or making their decision on what recommendation they are going to make, fine. But it doesn't look like we are getting into mitigation. It's all self-serving.

THE COURT: I sustain as to that question.

Q Derrick, do you believe anything that's happened, either in your childhood or throughout your life, in some way could affect the mitigation in this case?

MR. MORGAN: Judge, I object to what he might think, the form of the question.

THE COURT: You can have him state facts but not what he thinks or what his opinions are.

Q Derrick, what events in your life do you think could mitigate this -- what's happened in this case?

A Okay.

THE COURT: I'm sorry. You can ask him what he thinks mitigates as far as punishment but not what happened that day.

MR. FERGUSON: Well -- oh, okay. I'm sorry.

THE COURT: I guess they were getting ready to object. I don't think the question is in proper form. Restate it.

MR. FERGUSON: It was improper.

Q Derrick, have different things in your childhood caused you emotional problems, emotional harm?

A Yes.

Q Did you always feel like you were basically the person in the family that just didn't fit in?

A Not only did I feel that way, I saw it that way and I tried to change it. Never been successful.

Q Did you ever -- let me strike that. Did the Ritalin in any way make it easier?

A It's documented that I took Ritalin.

I -- it's been such a traumatic childhood, that I recall taking so many medicines, I can't remember which one was Ritalin. I remember taking medicines that would put me to sleep, supposed to calm me down, help me act right in the classroom. Teachers saying, "Derrick, you are on medicine, you are still acting up," things of that nature.

Q Did you have problems coping daily in school?

A I can't hear you.

Q Did you have problems daily coping in school?

A Daily. I'm sitting here trying to remember. There's other things besides fights, but there was not a day that went by I didn't get into a fight.

Q Derrick, do you remember who disciplined you when you were growing up?

A Sure. Sure. Yes.

Q Who was that?

A My father.

Q How did he discipline you?

A You mean what things --

Q How did he do it?

A How did he whip me? Switches.

Q Did you get a lot of whippings?

A I have gotten a lot of whippings.

Q Derrick, how old were you on the day of Ms. Cagle's death?

A 19.

MR. FERGUSON: That is all.

CROSS-EXAMINATION

BY MR. MORGAN:

Q Mr. Mason, did you know or have any idea how old Ms. Cagle was on the day you killed her?

A I have not known Ms. Cagle's age since I have been in jail.

Q Are you on any kind of medication today or have you been on any kind of medication this week?

A Not this week, no. If aspirin is considered a medication, that.

Q Aspirin?

A If that's considered a medication, yes.

Q Okay. You are here this afternoon testifying before this jury, asking this jury to show some mercy to you in their recommendation for the sentence that the Judge would impose upon you

for this crime; is that correct?

A Are you asking me if I'm asking for mercy?

Q Right.

A That would be -- that would be a request, mercy, yes.

Q On the early morning hours of March 27, 1994, did Angela Cagle ask for mercy or beg for her life before you took it?

A Well, Mr. Morgan, to be honest with you, I don't remember the details of that crime. I can't sit here and honestly tell you she did or she didn't, because I honestly don't remember anything.

Q You told Bud Parker that she cried. Do you remember saying that?

A The statement that I gave Bud Parker, something new came out at different hearings, and I don't recall or have a recollection of that interview, that statement. The only person I remember even talking to that night, and I remember him by his face, is the guy that was here yesterday or the day before yesterday with the --

Q So you don't remember requesting Bud

Parker to interview you and to talk to you and take a statement from you?

A I don't have a recollection.

Q If you don't remember what you said to Bud Parker, do you remember Angela Crying when you had her back there in the back room, had her taking her clothes off and holding the gun on her, threatening to kill her if she didn't unplug the camera?

A Okay. I think this question here requires the same answer as your first one. I don't recall especially any details.

Q Okay.

A Or any --

Q You are not telling us that didn't happen, you are telling us now you don't recall it?

A I'm telling you now I don't -- you know, it's scattered, probably should have been answered beyond truth.

Q You don't remember doing any of the things that Bud Parker said that you told him about in the statement that he took from you, don't have a recollection of any of that?

A Say that one more time.

Q You heard Bud Parker testify. You heard Bud Parker testify that he took a statement from you, very detailed?

A Yes, I heard him testify yesterday.

Q And today do you not remember any of those details the way you told Bud Parker on that occasion?

A Mr. Morgan, I don't even remember an interview with Mr. Parker.

Q Okay.

A The interview that I can recall, which is sketchy, is with --

Q One of the other detectives?

A Yes, and it was about --

MR. FERGUSON: I think we are going to object on this line, that he is going where he is going with it.

THE COURT: Overruled. I think he has answered. Ask your next question.

Q Do you remember anything about the interview?

A Like I just said, I remember little sketches of an interview of -- I can't remember the fellow's name, the mustache guy.

Q Harry Renfroe?

A Yes, Renfroe. Renfroe. It was concerning -- if I'm allowed to answer.

MR. FERGUSON: Judge, could we approach?

(Whereupon, counsel approached the bench and the following occurred out of the hearing of the jury:)

MR. FERGUSON: Clearly Tim is trying to go outside of this rule and get him to say something, and he knows it.

THE COURT: I don't think he is trying to, but we have got to stop this, now, before we do get into that, even inadvertently. I can't allow that, even by accident. And I'm not going to try to correct this record.

MR. MORGAN: I'm not intending to do that.

THE COURT: I know. Why don't you move into something else, then.

MS. HALL: Perhaps Randy should instruct his client not to respond to the question. I mean, Tim is not doing anything inappropriate.

THE COURT: Well, I'm not blaming anybody, I'm just saying we can't go into it.

Q (By Mr. Morgan:) Mr. Mason, you have expressed, and I believe your words were, great remorse for the death of Angela Cagle. But, now, you are telling us you don't remember that death?

A Okay. This is when my attorney asked me about the remorse of Ms. Cagle, I had been brought into court, convicted of killing Ms. Cagle. If I were to have gotten on the stand yesterday to be directly examined or cross-examined, I wouldn't have done any good, because I don't have a recollection. But now that I have been convicted and I have no sense to -- after seeing pictures, to know that a woman is dead, I'm being blamed for it and I have been deemed guilty. Yes, I'm sorry for it.

Q So you are sorry that somebody is dead, but you don't remember having anything to do with it. And your remorse is just for the fact that Angela Cagle is dead?

MR. FERGUSON: Judge, we object; he is beating this horse to death. He has asked the same question five times.

MR. MORGAN: Judge, the only mitigating -- the only thing that I have heard this

afternoon, in my opinion, in my opinion only, that lends itself to mitigation is remorse shown by this defendant since this act. And I just wanted to, since he took the stand, and give him the opportunity to explain to us his remorse. If his lawyer didn't go into it -- but if Your Honor doesn't want me to, I won't.

THE COURT: Restate your question.

Q You don't feel remorse for killing her, do you?

A I feel remorse because someone is dead.

MR. MORGAN: All right. You have answered my question. Thank you.

(Brief pause.)

MR. MORGAN: I don't have any other questions, Your Honor.

THE COURT: Any further?

MR. FERGUSON: Just a few.

REDIRECT EXAMINATION

BY MR. FERGUSON:

Q Now, Derrick, there is no question, you know you were there that night; true?

A Yes. I don't remember the details of what Mr. Morgan was asking me.

Q And you know you caused the death of Ms. Cagle?

A Yes, sir.

Q You just don't remember exactly what you did?

A I don't remember the details that he was trying to get me to say. "Do you remember standing over her," something like that. I was telling him, no, I don't remember that.

Q But you are telling this jury you know you did it, there is no question about it?

A There is no question about it.

Q But there is parts that you just do not remember?

A There is parts I don't remember, no.

Q And you have remorse for Ms. Cagle and, of course, for that family, don't you?

A Yes, definitely. Definitely.

MR. FERGUSON: That is all, Judge.

THE COURT: Anything further, Mr. Morgan?

MR. MORGAN: Nothing, Your Honor.

THE COURT: You may step down, Mr. Mason.

Exhibit 3

LAWRENCE R. MAIER, Ph.D.
 Licensed Psychologist
 Certified Forensic Examiner

ASSOCIATES FOR PSYCHIATRY & COUNSELING
 250 Chateau Dr., Suite 145
 Huntsville, AL 35801
 Telephone: (205) 881-8147
 Fax: (205) 880-3299

October 17, 1994

Honorable Thomas Younger
 Circuit Court Judge
 Madison County Courthouse
 100 North Side Sq.
 Huntsville, Al 35801

RE: Derrick O'Neal Mason
 Case No.: CC-94-922
 CC 74 7231

Dear Judge Younger:

Please find enclosed the Outpatient Evaluation Report on the above-named defendant, who was evaluated by Dr. Lawrence R. Maier, Ph.D., on October 6, 1994.

If additional information is needed, please advise. Please note that pursuant to Rule 11.5, Alabama Rules of Criminal Procedure, a copy of this report has not been provided to the Circuit Clerk.

Sincerely,

Renae Phillips
 Renae Phillips
 Court Liaison

Enclosure: Outpatient Forensic Evaluation Report

CC: Honorable Randy Ferguson
 Honorable Karen Hall
 Taylor Hardin Secure Medical Facility



OUTPATIENT FORENSIC EVALUATION

NAME:	Derrick O'Neal Mason
DATE OF BIRTH:	August 9, 1947
CHRONOLOGICAL AGE:	20-1 Years
MADISON COUNTY CASE NUMBER:	CC94-922, CC94-923Y
DATE OF EVALUATION AND REPORT:	October 6, 1994

REFERRAL INFORMATION

Mr. Derrick Mason is a 20 year old, never married black male, court-ordered by the Honorable Circuit Court Judge Thomas Younger for assessment of Competency to Stand Trial and Criminal Responsibility. Mr. Mason faces one count each of Capitol Murder and Robbery, according to the court order. Information received from defense attorney Mr. Randy Ferguson indicates charges of Capital Murder and Attempted Murder. Due to security concerns, assessment was done in the Madison County Jail. There has been no prior contact between defendant and this examiner. This assessment has the approval of authorities from the Taylor Hardin Secure Medical Facility.

NOTIFICATION OF RIGHTS

Care was taken to explain all central notification issues, both orally and in writing: reasons for assessment; conditions of possible later testimony; limited confidentiality and report recipients; and that cooperation during assessment will not be used to help determine guilt. Mr. Mason showed no difficulty in understanding any of the conditions and correctly signed and dated the standard notification form used to acknowledge understanding and willingness to cooperate. No assessment difficulties were encountered.

SUMMARY OF ALLEGED OFFENSES

According to information received from Madison County Assistant District Attorney Ms. Karen Hall, defendant did, during the early morning hours of March 27, 1994, shoot to death with a borrowed pistol a female convenience store clerk during an unsuccessful robbery attempt. Mr. Mason allegedly fled the crime scene but - thanks to suspicions about his involvement with two earlier crimes - was arrested on March 30, 1994. He has since been incarcerated in the Madison County Jail, at first in isolation because of fighting, but now in the general population.

DATA SOURCES

Circuit Court Order for Evaluation.
 Incident Report.

Police Investigation Reports.

Witness Statements.

Defense Attorney Information Form.

Alabama Department of Forensic Sciences Report, Including Autopsy on Victim.

Phone Call to Jail Personnel Regarding Meds/Adjustment.

CLINICAL ASSESSMENT

Because of security concerns, assessment took place in a quite room in the Madison County Jail. Mr. Mason was sufficiently talkative and cooperative, and no assessment difficulties were encountered.

He is a large man (280 # and 6'4"), dressed in the usual two-piece orange prison garb. Fingernails were unusually long and clean. He too was clean and neat, recently shaved, with curly, close-cut hair. There were no unusual physical stigmata noted.

Mr. Mason denied any significant prior mental health or substance abuse history (evaluation or treatment). He did reveal a long history of learning and behavioral problems during his school years, having attended some special education programing, and being kicked out of school in ninth grade at age 16 for "gang violence". He also reported a multi-year history of treatment with the stimulant drug Ritalin, a drug often used in children with Attention Deficit/Hyperactivity Disorders. Ritalin administration stopped when he was about 15. On the positive side, he did complete a cosmetology skill program at a local technical school and had part-time employment as a hair cutter somewhere in Tennessee at the time of the murder.

He reports a long history of illegal street drug abuse (as well as alcohol) including daily use of marijuana, occasional LSD, and on the night of the murder, a combination of LSD and strong marijuana ("reefer"). To my knowledge, he has never sought nor received treatment for substance abuse, even though others have apparently been concerned about his behavior for most of his adolescent years.

Mental status evaluation revealed no problems with orientation, be it time, place, person, or purpose. His memory, both short and long term, was intact and intellectual functioning is estimated to fall in the normal range. There was no evidence of thought or major feeling disturbance, except for possible drug-caused hallucinatory activity, including on the night of the alleged murder. Mr. Mason's current emotional state showed no unusual anxiety, depression, remorse, or even state-appropriate sadness. He was at all times calm and appropriate, with speech clear, easily understood, and not reflective of any content impairment. He did express pervasive beliefs of mistrust and suspicion toward the entire judicial system, although he did admit to some attitude change now that he can see things from society's point of view on police and lawyer shows watched on TV.

His concentration and attention were adequate or better. He showed no trouble attending to what was going on. I saw no evidence of thought looseness of associations or other thought disorder. There is no past or current evidence to suggest danger of self-harm. He does not show signs of delusional thinking. Eye contact was adequate and there were no unusual mannerisms.

At times, thought, he did seem bored, as evidenced by his cleaning of his fingernails - one hand with the other. He appeared to maintain appropriate and constant control at all times.

Based on all available current information, the following diagnostic impressions are offered for the court's consideration (DSM-IV):

Axis I: Alcohol Abuse (in forced remission).
Hallucinogen Abuse (in forced remission).
Cannabis Abuse (in forced remission).

Axis II: Anti-Social Personality Disorder, Chronic, Severe.

Defendant is in no appreciable distress, and current adjustment-given circumstances, seems adequate. After some initial fighting, there have been no management problems at the jail. No judicially ordered emergency care is indicated or recommended.

FORENSIC ASSESSMENT

Competency to Stand Trial

In order to assess the defendant's ability to assume the role of a competent defendant, he was administered the Competency to Stand Trial Assessment Instrument (CAI) as part of the evaluation. The CAI is a semi-structured interview device designed to measure the defendant's knowledge and understanding in 13 areas related to trial competency.

Mr. Mason showed a generally adequate performance on the CAI, including rather vivid recall of some of the events surrounding the alleged crime. He does know the nature and seriousness of the charge against him, although he did not seem knowledgeable as to the full range of possible penalty if convicted. Although he did know that he could be sentenced to life in prison without parole, he seemed surprised when informed that a judge might also be able to sentence a guilty person to death for a Capital Murder conviction. His assessment of possible case outcome seemed reasonable given the facts available.

He has adequate capacity in regard to his knowledge of the duties of various courtroom participants; a defense attorney is "to defend me, to protect me"; a prosecuting attorney "is trying to skin me... to prosecute... to go against me with the evidence..."; a judge "regulates and sentences"; a jury "decides if I'm guilty or not"; and witness "tell what they seen or thought they seen".

Although defendant's attitudes reflect widespread suspicion and distrust toward the judicial system, these limitations are based on prior experience and learning, not mental illness. Thus, although he suspects his attorney's motives, he is able to cooperate and participate in legal decisions, if he wishes. That includes adequate understanding of court procedures, as well as concepts such as plea-bargaining and the adversarial process. Furthermore, he does know what to do if faced with a lying or hostile prosecution witness, and is also sufficiently experienced with courtroom events and rules, to behave himself at all times if he wishes. There is adequate

self-serving motivation present and he is capable of testifying in his own behalf, if that is recommended.

When asked about his thoughts, feelings, and timing of his actions surrounding the alleged offense, he was forthright and believably truthful. He showed good recall for details of pre-crime drug involvement as to type and consumption, and could also report with adequate clarity the apparent drug-caused hallucinatory activity that occurred during the crime itself. Such symptom report is not uncommon from LSD intoxicants, and it is my opinion that this man's symptomatology then was drug-related.

At the present time, Mr. Mason is at or above the general level necessary for adequate understanding and participation in a trial process. He has had prior experience with the judicial system and well understands the adversarial process. His generalized suspiciousness about the system and how it works should not appreciably interfere with his ability to understand proceedings and to cooperate when necessary with his attorney. He does have sufficient capacity to testify in his own behalf. It is recommended that he be returned to court to face the charge against him.

Mental State at the Time of Offenses

All of the evidence available to me suggests that Mr. Mason was likely significantly intoxicated at the time of the murder. He had been consuming numerous drugs before the crime (alcohol, LSD, "Mad Dog", and Marijuana) and stated his belief that "I had never been that high before". Apparently his intoxicated state continued well into the next day, by his own report.

I see little if any evidence to suggest the operation of any significant mental illness or mental defect at the time of the crime. Being intoxicated is not in and of itself any indication that he was unable to understand the difference between right and wrong and to appreciate that difference. In my opinion the auditory hallucinations that he may have experienced around the time of the murder were not primary to the central motivational state of obtaining money by robbery, although he may have been hypervigilant and not capable of adequate perception from either external or internal stimuli. Certainly his judgment was impaired at the time of the crime but it was due to his drug-altered emotional and cognitive state, in combination with a long-standing personality disorder with impulsivity and poor emotional control. In total, there is evidence from interview, defendant's prior statements, and police reports that he did know right from wrong at the time of the crime. In my opinion there is not sufficient evidence to warrant a mental state defense.

SUMMARY AND RECOMMENDATIONS

Mr. Mason was evaluated for competency to stand trial and criminal responsibility at the judicial request of Judge Thomas Younger. He faces one charge each of Capital Murder and Robbery. Evaluation is now complete and opinions are that he does understand the nature and seriousness of the charges against him and he can assist his attorney in his own defense if he chooses to do so. He is able to testify in his own behalf if recommended. As for his mental state at the time of the crime, he was apparently highly intoxicated, although not without the ability to distinguish right from wrong. Defendant shows a clear history of serious polysubstance abuse, and gradually

worsening behavioral and anti-social concerns are evidenced in the historical information available for review. The current charges are not the first time that this young man has been in serious trouble for violation of societal rules.

Opinions are that there is not sufficient evidence to warrant a mental state defense and that he should be returned to court to face the charges against him.

As a psychologist, I recognize that questions of competency and criminal responsibility are properly matters for the court and/or jury to decide. Therefore, the opinions offered in this report are advisory only. I would be happy to provide additional testimony and/or information should the court require.

Respectfully submitted,



Lawrence R. Maier, Ph.D.
Certified Forensic Examiner
Licensed Psychologist

LRM/trp

CC: The Honorable Randy Ferguson, Defense Attorney
The Honorable Karen Hall, District Attorney
Taylor Hardin Secure Medical Facility

Exhibit 4

ROBERT A. DEFRANCISCO, PHD, ABMP
Board Certified Clinical-Forensic Psychology
Diplomate Academy Medical Psychology

By Appointment
Ph: 251-809-3290
Fax: 251-809-3292

Brewton Medical Center
1121 Belleville Ave
P. O. Box 648
Brewton, AL 36427

Forensic Evaluation

Name: Derrick O'Neal Mason
Date of Birth: 08/09/1974
Date of Evaluation: 09/06/2011

Referral:

Derrick O'Neal Mason is a thirty-seven year old African American male who was evaluated at the Holman Prison facility in Atmore, Alabama. He was referred for a forensic evaluation by his attorneys, Baker & Hostetler. The Defendant is on death row and has been charged with Capitol Murder and Robbery. The defense attorneys requested that Mr. Mason undergo an evaluation to determine his State of Mind at the Time of the Crime as well as other significant health issues that could provide mitigating evidence. According to his defense attorneys, his execution date by lethal injection is scheduled for September 22, 2011. The defendant has been incarcerated at the Holman Prison facility since 1995.

Notification:

Prior to the evaluation, the defendant was informed as to the purpose of the evaluation and the limited confidentiality inherent. Specifically, he was told that the results would be submitted in the form of a report to his defense counsel. He was informed that the results of these test findings could be used in court proceedings should the defense counsel choose to do that. He was also informed that there may be testimony by this examiner and a written report formulated to help his

defense counsel concerning his Mental State at the Time of the Offense and also psychological or mitigating factors that may have contributed to this unfortunate tragedy. The defendant indicated that he understood the purpose and the confidentiality of the evaluation and agreed to proceed.

Summary of Alleged Offenses:

According to review of documents submitted by defense counsel, during the early morning hours of March 27, 1994 the defendant, Derrick O'Neal Mason, shot and killed a female convenient store clerk, who at that time was a twenty-five year old Caucasian female named Angela Cagle. The motive for the crime was, according to the defendant, to rob the store in order to support his drug habit. He was subsequently arrested on March 30, 1994. As stated, he has been convicted of the crime and is scheduled to be put to death by lethal injection on September 22, 2011.

Data Sources:

Multiple data sources were reviewed regarding this case. Defense counsel, via attorney Essence Liburd from the firm of Baker & Hostetler sent numerous documents regarding Mr. Derrick O'Neal Mason. There were in excess of 200 pages of documents that were reviewed that included an Outpatient Forensic Evaluation Report by Dr. Lawrence Maier and numerous documentations regarding school records and various documents and evaluations that were completed by a multitude of individuals during his childhood and his adolescence. Witness statements were reviewed as well as police investigation reports, probation officer reports, school reports, etc.

Pertinent Background Data:

As stated, the defendant has been convicted of Capitol Murder and is sentenced to be executed by lethal injection on September 22, 2011. Background data reveals that he was born and raised in Madison County, Alabama and was born on August 9, 1974. He resided in Madison County,

which is in the Huntsville area most of his life, except between 1989-1990 when his family moved to Pulaski, Tennessee. According to Mr. Mason, he is the younger of two children, born to Moscs and Maggie Burton Mason of Pulaski, Tennessee. His parents are still living and are married. He reports a rather strict childhood in which he felt and believed that he could not please his parents. His parents were very religious and committed to the dogma of the Seventh Day Adventist teachings in which no meat was allowed in the house. He always looked up to his older brother, Marcus, who is allegedly a model sibling and an excellent student. Derrick, himself, struggled through school and was diagnosed in earlier years with having Attention Deficit Hyperactivity Disorder (ADHD). This is documented by the forms that I read that were sent to me by defense counsel. He was placed on Ritalin for a number of months, which he took erratically because it made him tired. He completed the 9th grade and then attended Drake Technical School in which he went through a Cosmetology curriculum. At the time of the offense he had worked as a Barber as well as for his father who owned a small carpet business.

Mr. Mason indicates that he has had a long history of alcohol and substance abuse, primarily marijuana, though he has engaged in LSD in the past. During his early years, Mr. Mason indicated that he had difficulty focusing and concentrating and never felt that he could compete with his brother. He had learning and behavioral problems throughout elementary school, sometimes attending some special programming. He was eventually expelled from school at the age of 16, after having completing the 9th grade for continual disruption. As stated, he has been treated with Ritalin in the past and he experimented at early ages, typically 15 or 16, with street drugs, including but not limited to marijuana, occasional LSD and on the night of the murder apparently he had marijuana laced with embalming fluid as well as alcohol.

He had been in constant trouble with the school when he was younger with multiple suspensions. He was convicted of attempted arson in 1989 and given one year probation and community service. In 1991 he had a sexual abuse charge in which he had to perform community service,

attend juvenile sex offender counseling and was placed on probation. He also had a speeding ticket. After he completed the 9th grade he allegedly was homeschooled for a while but that did not go very well.

As stated earlier, his father owned a carpet cleaning business and both his father and mother were involved in that business. From what I can tell regarding the reports that I have read, Derrick received some superficial counseling with a social worker but never received any attentive psychotherapy by a psychiatrist or psychologist.

Clinical Assessment

Mental Status Evaluation:

Mental Status Examination reveals a well built African American male who is somewhat balding. He is dressed in white prison fatigues and he was not handcuffed or shackled at the time of the examination. There were no noticeable tattoos or abrasions that were seen and this individual appeared to be masculine, alert and not sedated. His attitude was cooperative, attentive and interactive. There was no indication of any hostility or passive aggressive mannerisms.

Cognitively, his memory seemed to be well intact. His immediate, recent and remote memories were all within normal limits and certainly when we talked about the circumstances regarding this crime in 1994 he had some episodes where he had difficulty remembering details, not only because of the time that has elapsed, but also because it appears that at the time of the offense he was highly intoxicated with alcohol and marijuana laced with embalming fluid. At any rate, he was oriented x4 to person, place, date, time and situation. His concentration, attention and pace were all within normal limits at the time of the evaluation. The defendant demonstrated no distractibility; his reasoning and comprehension skills appeared to be within normal limits. His fund and range of knowledge and general judgment abilities all appeared to be adequate at this

time and his general intellect appeared to be low normal.

Speech productivity was normal with no indication of poverty of speech and his flow was normal with no indication of hesitancy. His tone was expressive though not loud and was intense at some points but judged to be normal. There was no indication of peculiarities in his tone; that is, there was no perseveration or echolalia.

Thought content was coherent and comprehensible and his speech had no slurring, mumbling or stuttering. His thought structure was logical and sequential and no evidence of tangential or loose association; he did not ramble and tended to be as detailed as he possibly could, he seemed meticulous and thoughtful with his responses.

He demonstrated no current homicidal or suicidal ideation during the examination and expressed remorse over what had happened regarding this terrible incident in 1995. He was not actively hallucinatory or delusional and his non verbal behavior indicated that his activity level was normal and that he had adequate eye contact, mannerisms and gestures. His facial expressions appeared to be candid and bonafide. Again, he seemed remorseful about the crime that had taken place in 1995 as well as how he had lived his life in general prior to his incarceration. He indicated that he now believes he has turned his life around and had found spiritual peace. While he was not looking forward to his death, he did not seem to fear it. His affect was appropriate to his mood and also the situation at hand. There was no evidence of inappropriate affect; range of affect was within normal limits. Hence, Mr. Mason demonstrated appropriate control over his current actions and emotions during the examination.

Results of Psychological Testing:

The Defendant was interviewed for approximately six (6) hours in a room supplied by Holman

Prison. The examination/interview commenced at 9:30am and terminated at 3:30pm. Mr. Mason was talkative and cooperative and there were no problems during the examination. He stands about 6 feet 4 inches tall and weighs about 260-270 pounds. Again, he was dressed in white prison fatigues. He was neat and clean, and he was well shaven and had an adequate appearance. As indicated earlier, Mr. Mason has a significant substance abuse history as well as difficulty getting along in school and being prone to antisocial practices. Prior to the commitment of this crime, he regularly met with several of his friends who used illegal drugs as well as alcohol, almost on a daily basis. Drug of choice was alcohol and marijuana, occasionally LSD and they would smoke marijuana blunts. He has never had treatment for substance abuse and/or any in-depth mental health therapy.

In order to determine the general psychological profile, three (3) of the most reliable forensic instruments in psychological literature were administered. These included the Rorschach, Minnesota Multiphasic Personality Inventory Second Edition (MMPI-II), and the Millon Clinical Multiaxial Inventory (MCMI-III). All of these instruments have been thoroughly researched and are recognized as being able to recognize a person's personality structure and general demeanor.

On the Rorschach, Mr. Mason gave only eight (8) responses, with fifteen (15) to twenty (20) being normal. However, the responses were all popular responses, and showed good reality contact. That is, there was no active psychosis. The paucity of his responses is suggestive of a rather rigid, concrete individual who does not use his resources to his advantage. He tends not to see detail, jumps to conclusions and responds in an all-or-none fashion. That is, Mr. Mason has a tendency to see the world as black Or white rather than as being black And white. There were five (5) block responses to the Rorschach cards in which he saw no design, suggesting poor introspection and lack of insight. Hence, Mr. Mason would be seen as more reactive than reflective with his demeanor.

The MMPI-II and MCMI-III complement one another and are both done in a valid manner. That is, there is no overstating or understating his characteristics. His basic personality profile is one of an individual who shows a multitude of confusing thought and antisocial features. This would tend to make it difficult for him to make sense out of his life and adapt his behavior to life circumstances. He has found it difficult in life to like himself and believed in the earlier years of his life that he was inferior and defective. This sense of inferiority propelled him to engage in borderline and blatant antisocial practices. This general make up of inferiority lends itself to substance abuse as a means of escape from everyday life and responsibilities. In other words, Mr. Mason generally disliked himself and saw himself as a misfit. Certainly the use of alcohol and drugs can alter his thought processes where he does not think clearly and therefore it interferes with his judgment and decision making.

Mr. Mason's life has been one that he concluded at an early age was negative and unproductive. He therefore associated with individuals who likewise, had dissatisfied attitudes towards other people and society and therefore he became rebellious much like they did. His bold, self indulgent behaviors were to provide a sense of false security as well as power. That is, Mr. Mason's disdain for himself would not allow him to feel any sense of success, therefore violent and reckless behavior became more prominent and once substance abuse was factored in, they became both a cause and effect of his antisocial personality features and unusual ways of thinking.

From a cognitive perspective, his sense of inferiority affected how he viewed discipline. Instead of seeing discipline as a way of correcting his negative behavior, he would view it as evidence of his 'inferiority'. Hence, his recklessness continued and his misunderstandings about life continue to spiral out of control. He could therefore, not feel secure and acted before he thought about the consequences of his actions. So, despite the dissatisfaction with his choices, actions and decisions he was unable to stop himself. These led to antisocial practices and the use of

substance abuse further compounded his negativity towards himself as well as others.

Forensic Assessment:

Mental State at the time of the Offense/Other Forensic Opinions

Section 13A-3-1(a) of the Alabama Criminal Code states that with regard to a mental state defense, 'at the time of the commission of the acts constituting the offense, the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature of the quality or wrongfulness of his acts.'

Mr. Derrick Mason was thoroughly evaluated regarding motivation, timing and memory of the offense leading to the Capitol Murder of Ms. Angela Cagle. This individual has a long history of polysubstance abuse including alcohol, occasional LSD, marijuana and at the time of the offense, marijuana laced with embalming fluid. Mr. Mason believes that the marijuana was laced with embalming fluid because he had never hallucinated in this manner before and was 'tripping like he had never tripped before.' He says that he appeared to almost be in a trance-like state, had an out of body experience and felt totally detached, confused as well as agitated and bizarre. He stated that he would regularly 'meet with these friends' where they would abuse these drugs and had committed one or two robberies in the past with the purpose of supporting their habit. He, unfortunately, because of his lack of self-esteem, associated with people who shared many of his feelings of dismay and poor self-esteem. The State's own Examiner, Dr. Maier, in his report on October 6, 1994 indicates that the defendant may have been hyper vigilant and not capable of adequate perception from either external or internal stimuli because of his intoxication with the substances of alcohol and marijuana. He further states that his judgment was impaired at the time of the crime and this was due to his drug altered emotional and cognitive state in combination with a long standing personality disorder with impulsivity and poor emotional control. Dr. Maier concludes that Mr. Mason was highly intoxicated, although not without the ability to distinguish right from wrong. Since there are no laboratory tests to review and it is the defendant's

conclusion that the marijuana was laced with embalming fluid that he ingested that night, I have to agree with Dr. Maier that this tragic situation was mitigated by probable drug intoxications which may have lead to a drug induced psychosis. The cmbalming fluid actually mimics phencyclidine (PCP), which is a synthetic dissociative drug that can lead to feelings of detachment from both self and environment. This can precipitate delusions, agitation, and distortion of body senses, which this defendant indicates he in fact experienced. He alleges to me that he does not know how he got into his car and indicates severe confusion at the time of his driving. The act was done on an impulsive whim and his feelings of alienation as well as the drug and alcohol intoxication causing him to act in a violent manner and therefore was a major factor in this crime. Hence, at the time of the offense, it appears that the defendant was quite intoxicated with illegal substances that affected his ability to control his actions. Certainly, however, he chose to ingest these drugs and therefore he is responsible for the act himself.

Summary and Conclusion:


On the request of Baker & Hostetler, Mr. Derrick Mason was evaluated to help determine his State of Mind at the Time of the Crime as well as ongoing mental health issues that could provide mitigating factors during the crime. In order to determine this, Mr. Mason was interviewed for an extensive period of time and appropriate psychological testing was employed. Also, multiple documents were reviewed as well as a forensic evaluation conducted by Dr. Lawrence Maier, the State Forensic Examiner, in October of 1994. I agree with Dr. Maier that it was apparent that Mr. Mason was highly intoxicated at the time of the crime. I would also conclude that he has a long history of polysubstance abuse as well as a history of inferiority that made him very vulnerable to exercise poor judgment as well as irresponsible and impulsive behavior. The use of hallucinogens and other drugs in combination with a predisposed belief of negativity of oneself and the environment in general i.e. antisocial features would be a poor combination in controlling his behavior. Hence, there are prominent mitigating factors to this tragic offense.

In my recent interview with Mr. Mason, it now appears that through his own readings and his own incarceration, he has had time to reflect upon this crime. He has now obtained a GED while he has been in prison. There is no question in my mind, that the use of drugs that he ingested the night of the crime as well as a preexisting dislike for himself and antisocial features were strong mitigating factors in this very unfortunate and tragic murder of Ms. Cagle. If Mr. Mason would have received appropriate psychological intervention and therapy, this unfortunate tragedy may have been avoided. I could only ask the Court to reconsider the points that I have outlined in this report and understand that these factors were strong mitigating influences on the behavior that occurred not only that night but the behaviors that Mr. Mason engaged in prior to his incarceration.

Diagnostic Impression is 1) Substance Induced Psychosis versus Substance Induced Intoxication
2) Personality Disorder NOS with Antisocial features.

Thank you very much for this forensic consultation. Should you have any questions please contact.

Respectfully Submitted,



Robert A. DeFrancisco, PHD, ABMP
Diplomate, Medical Psychology
Certified Forensic Examiner
Master Psychopharmacologist

Exhibit 5

EVIDENCE ON BEHALF OF THE DEFENDANT

JAMES ANTHONY LEE

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FERGUSON:

Q State your name for the record, please.

A James Anthony Lee.

Q Mr. Lee, where do you work?

A For the City of Huntsville Police Department. I'm a jailer at the city jail.

Q What do you do at the city jail?

A Supervise inmates, take people to court, break up fights, various and numerous things that the jails consist of.

Q Were you working in the jail on March the 30th, 1994?

A Yes, sir.

Q Were you working the morning -- or the first morning that Derrick Mason was in the city jail?

A Yes, sir. I took him to court on city cases the next morning.

Q Have you had experience with people who

are intoxicated and under the influence of alcohol?

A Yes, sir.

Q Have you had experience with people who are using illegal drugs?

A To a certain extent. I see much more of the alcohol stuff than I do the drug stuff.

Q Did you see Derrick Mason the morning of the 30th?

A Yes, sir.

Q What was your first impression of Derrick when you saw him?

A My first impression was I couldn't get anything out -- I couldn't get any cooperation out of him at all. I went to the back cell for a head count and tried to talk to him, get him to get up because breakfast was coming around, and the man would not even answer my questions. The best I got out of him was a grunt, was all I could get in reply.

Q What was your first impression as to what was wrong with him?

A I wasn't sure. I assumed drugs or something else. Either trauma from what

supposedly had happened the night before. I really just did not know.

Q Did he look different in his eyes or his expressions?

A I wouldn't say his eyes looked any different. He looked normal, but, yes, his expressions most definitely. I'm serious. Until halfway through court, I did not -- I don't think I even got a word out of him until finally he had to talk in court, and he finally started opening up.

Q Did he seem scared?

A I wouldn't say scared. I honestly don't know how to describe it. His mind was somewhere else, is the best way I could put it.

Q Is it unusual to see someone like that that's in the city jail?

A Sort of. I see some mental cases that way and I see some drug-related cases that way.

Q You stated that you asked him a number of questions --

A Yes.

Q -- that morning.

A "You need to get up." You know, "What wrong with you?" You know, that sort of thing --

because he wouldn't get up off his bunk.

Q And what were his responses?

A He had no response.

Q Do normally the inmates answer your questions when you ask them?

A Yes, sir, they do. I have very little trouble getting inmates to comply with me at the jail.

Q Now, did Derrick seem different the afternoon after he went to city court?

A Yes, sir. He started coming around and acting fairly normal. You know, he seemed to have a lot on his mind. He was talking and -- talking to some other inmates and things, but it wasn't -- it wouldn't -- it was like he didn't want me to hear it. He would stop every time I come around. But at least he was talking, you know. We couldn't --

Q Have you ever seen anybody coming off using drugs and alcohol?

A Yes, sir.

Q Did it seem to you as if he might be coming off of some substance?

MS. HALL: Judge, I object to the form of

these questions. He is leading his witness and I'm trying to be accommodating, but I would request that he ask non-leading questions of this witness.

THE COURT: Just ask him what he observed, if you would, and don't lead him.

Q Did you observe a difference between the way he acted the morning that he was arrested -- or the first morning that he was in the city jail and the afternoon?

A Yes.

Q What was the difference?

A Well, in the morning he wouldn't comply with any orders, any directions. No facial expressions except for once I think he kind of gritted his teeth a little bit and growled at me. And that was it. In the evening time he would answer my questions and "Yes, sir," "No, sir," and real polite.

Q Was he cooperative with you after that?

A Yes, sir.

Q Do you have an opinion as to if -- strike that.

You stated you have seen a number of people at the city jail who have had alcohol and

illegal drugs use.

A Yes, sir.

Q In your opinion in observing Derrick, did he act the same as other individuals who had been on those substances?

A I wouldn't say exactly the same. I have seen a few people that were -- I don't know how to put it -- either that had used drugs so long or that were so accustomed to it that they act fairly normal except for being able to talk and, you know, comply with directions, and they just sit there and look at you and stuff like that. It's just hard to say. Something had his mind occupied to the point that he did not want to speak or talk or comply with anything or, you know, he was on drugs. I can't test his blood, I can't do anything like that. You know, our nurse won't even go to that point unless it's like his behavior is life threatening or so bad that we think we need to send him to the emergency room or something like that. So no one, I don't think, actually checked to see if he was under the influence of drugs.

Q Were you worried at any point that there might be something wrong with him?

A The only problem I was worried about was in court. I spoke to the bailiff in our courtroom and told him that he was acting strange and told him if he became a problem I was letting him know that I was going to jerk him up and take him back to jail as soon as I could, if it got out of hand. But as it turned out he wasn't a problem in court.

Q How long have you been with the Huntsville Police Department?

A Ten years and three months.

Q Did Derrick seem confused when you were asking him these questions?

A I guess you could say as I kept asking questions, yes. I think that's why I got the growl out of him that morning, because it was like he didn't want to talk to me and it was making him antsy or whatever whenever I would keep on with trying to get more information out of him.

MR. FERGUSON: Nothing further.

CROSS-EXAMINATION

BY MS. HALL:

Q Mr. Lee, would it be fair to say that Derrick Mason was preoccupied at the time you saw him?

A I suppose so, yes, ma'am.

Q Could we also assume from what you have previously told us that he could have been agitated.

A Yes. I have never seen anyone quite that solemn and be agitated, but, yes, I suppose you could.

Q You have been with the Huntsville Police Department a little over ten years?

A Yes, ma'am.

Q Have you ever been through the police academy?

A No, ma'am.

Q You are a civilian employee?

A Civilian employee.

Q Employed by the Huntsville City Jail?

A Yes.

Q How long have you worked in the jail?

A Ten years.

Q Ten years. So you have been the jailer there for over ten years?

A Yes, ma'am.

Q Tell us, if you would, on how many occasions drugs have been found in the Huntsville

City Jail.

A Two or three.

Q Okay.

A Nothing -- I don't think we ever had anything as serious. It's mostly like marijuana.

Q But it has been found in the jail?

A Yes, ma'am. Most of the time it's like in an area where the fresh book-ins come and it's like the next morning the cell they were taken out of and that sort of thing. We haven't recovered much out of the very back.

Q But you are aware of the fact that some drugs have been found?

A Oh, yes. Yes, they have.

Q As they have been in the Madison County Jail?

A Yes, ma'am. And some of those have been in the back. Most of it's up front, but a few times in the rear of the jail.

Q Now, did you smell the odor of alcohol about the person of Derrick Mason?

A No, ma'am.

Q You just -- let me ask you this: What time did you come on duty March the 29th?

A 7 o'clock.

Q All right. And what time did you get off duty?

A 3 o'clock. I assume that was the 29th. It was a Wednesday.

Q 7:00 a.m. to 3:00 p.m.?

A Yes, ma'am.

Q On the following day what time did you report to work, March 30th?

A The same time.

Q 7:00 to 3:00, that's your shift?

A Yes.

Q And as part of your duties, are you required to take the inmates to arraignments or hearings?

A I take them a lot. It's just a random thing. They pick a different jailer every day, but I seem to go over there a lot.

Q So on March 30th you took the prisoners down?

A Yes, ma'am.

Q Where did you take Derrick Mason?

A To the city jail, municipal court, courtroom A.

Q Who else was with you?

A I can't recall who walked over with me that day, honestly.

Q How many other inmates went with you?

A This is a guess. It was several, but I can't remember. I'd say 10 or 12.

Q 10 or 12?

A Yes.

Q Okay. And I think you said it seemed like his mind was somewhere else?

A Yes.

Q Did you know what he was charged with?

A Yes, ma'am, I did.

Q Now, do you know Derrick Mason?

A I don't think I know him except for seeing him in jail.

Q Did you know either Mr. or Mrs. Ferguson?

A Just from seeing them in the courtroom over at municipal court.

Q Over at municipal court?

A Yes.

Q How long have you known the two of them?

A I guess I've been seeing Jackie over

there off and on for a year and a half, two years. I can't pinpoint exactly. And Randy a good bit in the last 8 to 10 months to a year. I think Randy used to be a public defender some over there. I think he was the day in question, as a matter of fact.

Q When did you first talk with either Randy or Jackie about this case?

MS. FERGUSON: Your Honor, I don't see what the relevance is in this. I mean, this has nothing to do with a suppression hearing.

THE COURT: Overruled.

Q When did you first talk with them about this?

A About -- I haven't spoke to Jackie at all. I guess about a week ago Randy was in court with something else and sat there beside me and asked me if I remembered this, and I told him yes, I did remember him. He said, "Well, I may have to subpoena you to court to testify about coming to court over here," and I said, "Okay."

Q Okay. How long, if you can recall, was Derrick Mason there in the Huntsville City Jail?

A I think Judge Griffin gave him five

days, if I remember right -- I believe. I won't swear to that. I can't remember what the city charge was, but it seems like it was five days.

Q Certainly in your experience there at the jail, you have had other inmates who were not cooperative?

A Yes, ma'am. I don't --

Q Thank you, that's fine. And, of course, not everyone who refuses to talk to you is on drugs or alcohol?

A No.

MS. HALL: Thank you.

REDIRECT EXAMINATION

BY MR. FERGUSON:

Q Have we had any conversations ever outside the courtroom dealing with Mr. Mason?

A Not other than asking me if I remembered that day that I had him in court and then saying, "That's fine. I may have to subpoena you to court."

Q And that has happened one day?

A One time, that's right.

Q And that was about a week ago?

A Yes, thereabouts.

Q Have you ever had any business contacts in any form with anyone in our firm?

A No, sir.

Q As a matter of fact, didn't I have to ask you your name to do a subpoena?

A Yes, sir, you sure did.

MR. FERGUSON: No further questions.

THE WITNESS: You knew me as Lee, but you did not know my name.

MS. HALL: Thank you, I don't have anything.

THE COURT: Thank you, sir. You may be excused.

Let's take a short recess, about five minutes.

MR. FERGUSON: We would rest, Your Honor.

THE COURT: You're not going to put on anything else?

MR. FERGUSON: No.

THE COURT: Anything else from the State?

MS. HALL: No, sir.

THE COURT: All right. On the

CERTIFICATE OF SERVICE & ELECTRONIC FILING

No. 1971489

State of Alabama v. Mason

I hereby certify that I caused one hard copy of the foregoing Petition for Stay of Execution and Relief from Unconstitutional Sentence to be served on counsel for Petitioner by Federal Express Next Business Day delivery and an electronic copy by electronic mail to:

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Attorneys for Petitioner

I certify that an electronic copy was uploaded to the Court's electronic filing system. Nine hard copies of the foregoing Petition for Stay of Execution and Relief from Unconstitutional Sentence were sent to the Clerk's Office by Federal Express Next Business Day delivery to:

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Supreme Court of Alabama
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Montgomery, Alabama 36104
(334) 229-0700

on this 15th day of September 2011.

Notary Public:

/s/ Natasha R. Monell

Sworn to me this

September 15, 2011

NATASHA R. MONELL
Notary Public, State of New York
No.02MO6123816
Qualified in Kings County
Commission Expires March 14, 2013

/s/ Michael Lyon

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