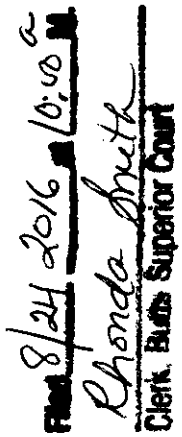
Appendix B

IN THE SUPERIOR COURT OF BUTTS COUNTY
STATE OF GEORGIA

MICHAEL LEDFORD,	*	
	*	**CIVIL ACTION NO.**
Petitioner,	*	**2012-V-907**
	*	
v.	*	**HABEAS CORPUS**
	*	
BRUCE CHATMAN, WARDEN,	*	
	*	
Georgia Diagnostic and Classification Prison,	*	
	*	
Respondent.	*	



FINAL ORDER

COMES NOW before the Court Petitioner's Amended Petition for Writ of Habeas Corpus as to his conviction and sentence in the Superior Court of Paulding County. Having considered Petitioner's original and Amended Petition for Writ of Habeas Corpus (hereinafter "amended petition"), the Respondent's Answer and Amended Answer, relevant portions of the appellate record, evidence admitted at the hearing on this matter March 17-18, 2014, the arguments of counsel and the post-hearing briefs, this Court makes the following findings of fact and conclusions of law as required by O.C.G.A. § 9-14-49. As explained in detail in this Order, this Court DENIES the petition for writ of habeas corpus.

I. PROCEDURAL HISTORY

Petitioner, Michael Ledford, was convicted by a jury of malice murder, two counts of felony murder, three counts of aggravated battery, one count of aggravated sodomy, two counts of kidnapping with bodily injury, and one count of aggravated assault. On May 22, 2009,

Petitioner was sentenced to death for malice murder. The trial court also sentenced Petitioner to twenty years each for the three aggravated batteries; life without parole for the aggravated sodomy; life without parole for the first count of kidnapping with bodily injury; and twenty years for the aggravated assault, all to run consecutive to each other and the death sentence.[1] Petitioner's motion for new trial, as amended, was denied on May 25, 2010. The Georgia Supreme Court affirmed Petitioner's convictions and sentence of death on March 25, 2011.[2] Ledford v. State, 289 Ga. 70 (2011). His petition for writ of certiorari was denied by the United States Supreme Court on November 7, 2011. Ledford v. Georgia, 132 S. Ct. 556 (2011).

On October 9, 2012, Petitioner filed the above-styled habeas corpus petition, and an amended petition on December 2, 2013. An evidentiary hearing was held on March 17-18, 2014. The parties were given a subsequent briefing period and this Order follows review of all pleadings.

II. STATEMENT OF FACTS

The Georgia Supreme Court summarized the facts of Petitioner's crime as follows:

> [O]n July 25, 2006, Michael Ledford pretended to go to work but, instead, bought beer and drank it near the Silver Comet Trail, a recreational trail used for biking, running, and other activities. Ledford knocked Jennifer Ewing from her bicycle as she rode by his location. He dragged her a distance off the trail to a location shielded from view by vegetation. He stripped off all of her clothing from the waist down, and he pulled her shirt up part way, exposing her breasts. She suffered bruises throughout her body in the struggle. When Ledford forced his penis into her mouth, she bit his penis and severely wounded it. Enraged by her resistance, Ledford unleashed a shocking attack during which he stomped on her face and nose, her larynx, and her ribs. Ms. Ewing gradually succumbed to asphyxiation caused by her wounds and the resulting bleeding into her lungs.

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[1] The felony murder convictions were vacated by operation of law. Malcolm v. State, 263 Ga. 369, 371-372 (4) (1993).

[2] The Georgia Supreme Court vacated the convictions and sentences on the three counts of aggravated battery because they were established by the same conduct as the murder convictions. Ledford, 289 Ga. at 71-74.

Ledford v. State, 289 Ga. 70, 71 (2011).

III. INITIAL MATTERS

As an initial matter, Petitioner, citing Cullen v. Pinholster, 563 U.S. 170, 131 S. Ct. 1388, 1398-1399 (2011), claims in his Amended Petition that the time permitted by this Court was insufficient for Petitioner to investigate his substantive claims. Rule 44 of the Georgia Uniform Superior Court Rules ("USCR") applies "to all petitions seeking, for the first time, a writ of habeas corpus in state court proceedings for those cases in which the petitioner has received a sentence of death." USCR 44.1 (citing O.C.G.A. § 9-14-47.1). USCR 44.7 provides that "[n]o later than 120 days after the filing of the petition, the petitioner may amend the petition, and if discovery is allowed pursuant to O.C.G.A. § 9-14-48 it shall be completed." The Georgia Supreme Court has "urge[d] the habeas courts to make every reasonable effort in death penalty cases to adhere to the time limitations imposed under Uniform Superior Court Rule 44." Humphrey v. Morrow, 289 Ga. 864, 864 n.1 (2011).

Nonetheless, in an exercise of its discretion, the Court provided Petitioner with over twice the amount of time contemplated by the Rule to conduct discovery and to file an amended habeas petition.[3] The Court finds that Petitioner was provided "a reasonably adequate opportunity to present [his] claimed violations of fundamental constitutional rights to the courts." Gibson v. Turpin, 270 Ga. 855, 858 (1999) (quoting Lewis v. Casey, 518 U.S. 343, 351 (1996) (internal quotation omitted)). Accordingly, Petitioner's claim that he was not provided sufficient time to complete the investigation of his claims is DENIED.

IV. SUMMARY OF FINDINGS

[3] Petitioner's discovery period was extended for good cause shown including the appearance of new counsel on Petitioner's case. Additionally, the Court notes that Respondent requested, and received, extensions of their discovery period for scheduling conflicts and inclement weather.

Petitioner's Amended Petition enumerates fourteen (14) claims for relief. As stated in further detail below, this Court finds: (1) some claims asserted by Petitioner are procedurally barred due to the fact that they were litigated on direct appeal; (2) some claims are procedurally defaulted, as Petitioner failed to timely raise the alleged errors and failed to satisfy the cause and prejudice test or the miscarriage of justice exception; (3) some claims are non-cognizable; and, (4) some claims are neither procedurally barred nor procedurally defaulted and are therefore, properly before this Court for habeas review. To the extent Petitioner failed to brief his claims for relief, the Court deems those claims abandoned. Any claims made by Petitioner that are not specifically addressed by this Court are DENIED.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. CLAIMS THAT ARE *RES JUDICATA*

The Court finds that the following claims are not reviewable based on the doctrine of *res judicata*, as the claims were raised and litigated adversely to Petitioner in his direct appeal to the Georgia Supreme Court. Issues raised and litigated on direct appeal will not be reviewed in a habeas corpus proceeding. Elrod v. Ault, 231 Ga. 750 (1974); Gunter v Hickman, 256 Ga. 315 (1986); Hance v. Kemp, 258 Ga. 649(6) (1988); Roulain v. Martin, 266 Ga. 353 (1996). Specifically, the Court finds that the following claims raised in the instant petition were litigated adversely to Petitioner on direct appeal in Ledford v. State, 289 Ga. 70 (2011):

> That **portion of Claim II**, wherein Petitioner alleges that the prosecution made improper and prejudicial remarks during its argument at the guilt-innocence and sentencing phases of the trial. Ledford, 289 Ga. at 85-88(15)(16)(17) and (22);[4]

[4] To the extent this claim was not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

That **portion of Claim V**, wherein Petitioner alleges that the trial court erred in excusing unspecified potential jurors for improper reasons. Ledford, 289 Ga. at 76-77(6);[5]

That **portion of Claim V**, wherein Petitioner alleges that the trial court erred in restricting voir dire relating to several unspecified areas of inquiry. Ledford, 289 Ga. at 81-82(9);[6]

That **portion of Claim V**, wherein Petitioner alleges that the trial court erred in admitting various items of unspecified prejudicial, unreliable, unsubstantiated and irrelevant evidence tendered or elicited by the State at either phase of the trial. Ledford, 289 Ga. at 83-84, 87(12)(20) and (21);[7]

That **portion of Claim V**, wherein Petitioner alleges that the trial court erred in admitting prejudicial and irrelevant photographs into evidence. Ledford, 289 Ga. at 87(20);[8]

That **portion of Claim V**, wherein Petitioner alleges that the trial court erred in refusing to strike unspecified prospective jurors who were unqualified for reasons including but not limited to bias against the defense. Ledford, 289 Ga. at 75-81(5)(7) and (8);[9]

That **portion of Claim V**, wherein Petitioner alleges that the trial court erred in allowing the State to make improper and prejudicial arguments. Ledford, 289 Ga. at 85-88(15)(16)(17) and (22);[10]

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[5] To the extent this claim refers to jurors not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

[6] To the extent this claim was not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

[7] To the extent this claim refers to evidence not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

[8] To the extent this claim refers to photographs not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

[9] To the extent this claim refers to jurors not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

[10] To the extent this claim was not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

That **portion of Claim V**, wherein Petitioner alleges that the trial court improperly restricted the scope of voir dire. Ledford, 289 Ga. at 81-82(9);[11]

Claim VI, that the proportionality review performed by the Georgia Supreme Court is unconstitutional. Ledford, 289 Ga. at 75(3)(d);[12]

That **portion of Claim VII**, wherein Petitioner alleges that the Georgia statutory death penalty procedures do not result in the fair and non-discriminatory imposition of death sentences. Ledford, 289 Ga. at 75(3);

That **portion of Claim VII**, wherein Petitioner alleges that his death sentence was imposed arbitrarily, capriciously, and pursuant to a pattern and practice of discrimination in the administration and imposition of the death penalty in Georgia. Ledford, 289 Ga. at 88(23);

That **portion of Claim VII**, wherein Petitioner alleges that his death sentence is disproportionate. Ledford, 289 Ga. at 90-91(25);

That **portion of Claim VIII**, wherein Petitioner alleges that the evidence does not support the jury's final determinations as to conviction and sentence. Ledford, 289 Ga. at 71, 89-90; and

That **portion of Claim XXII**[13], wherein Petitioner alleges that the trial court erred in permitting the prosecution to introduce substantial inflammatory and prejudicial victim impact testimony. Ledford, 289 Ga. at 87(20).[14]

B. CLAIMS THAT ARE PROCEDURALLY DEFAULTED

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[11] To the extent this claim was not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

[12] In his post-hearing brief, Petitioner argues that by examining only those cases in which a death sentence was imposed, the Georgia Supreme Court's proportionality review does not satisfy the requirements set forth in O.C.G.A. § 17-10-35(e). (Petitioner's post-hearing brief p 89). Petitioner also argues that the Georgia Supreme Court failed to adequately explain why his death sentence was proportionate to the other crimes and defendants that it compared. Id. at 90. To the extent that these claims were not squarely rejected on their merits by the Georgia Supreme Court, Petitioner has not argued cause and prejudice to permit their consideration. Accordingly, these claims are denied.

[13] The Court notes that this claim is numbered Claim XXII in Petitioner's Amended Petition; however, Petitioner only has fourteen claims in his petition.

[14] To the extent this claim was not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

Claims Petitioner failed to raise on direct appeal are procedurally defaulted absent a showing of cause and actual prejudice, except where their review is necessary to avoid a miscarriage of justice and substantial denial of constitutional rights. Black v. Hardin, 255 Ga. 239 (1985); Valenzuela v. Newsome, 253 Ga. 793 (1985); O.C.G.A. § 9-14-48(d); Hance v. Kemp, 258 Ga. 649(4) (1988); White v. Kelso, 261 Ga. 32 (1991). Petitioner's failure to enumerate alleged errors at trial or on appeal operates as a waiver and bars consideration of those errors in habeas corpus proceedings. See Earp v. Angel, 257 Ga. 333, 357 S.E.2d 596 (1987). See also Turpin v. Todd, 268 Ga. 820, 493 S.E.2d 900 (1997)(a procedural bar to habeas corpus review may be overcome if Petitioner shows adequate cause for failing to raise an issue at trial or on direct appeal and actual prejudice resulting from the alleges error or errors. A habeas petitioner who meets both prongs of the standard enunciated in Strickland v. Washington, 466 U.S. 668 (1984), has established cause and prejudice sufficient to overcome the procedural bar of O.C.G.A. § 9-14-48(d)).

This Court concludes that the following claims, which were not raised by Petitioner at trial or on direct appeal, have been procedurally defaulted. This Court is barred from considering any of these claims on their merits due to the fact that Petitioner has failed to demonstrate cause and prejudice, or a fundamental miscarriage of justice sufficient to excuse his failure to raise these grounds:

> That **portion of Claim II**, wherein Petitioner alleges misconduct by the prosecution and other state agents in that:
>
> a) the jury bailiffs and/or sheriff's deputies and/or other State agents who interacted with jurors engaged in improper communications with the jurors;
>
> b) the State suppressed unspecified, favorable information from the defense at both phases of trial;

c) the State took advantage of Petitioner's ignorance of undisclosed favorable information by arguing to the jury that which it knew or should have known was false and/or misleading;

d) the State allowed its witnesses to convey a false impression to the jury; and

e) the State knowingly or negligently presented false testimony in pretrial and trial proceedings;

That **portion of Claim II**, wherein Petitioner alleges trial court error in that the trial court attempted to cure improper prosecutorial comments but failed to cure error and actually exacerbated it by drawing the jury's attention to the improper comments, and failed to correct these errors on its own motion;

That **portion of Claim III**, wherein Petitioner alleges State misconduct in that the State was implicated in or aware of any jury misconduct, and acted or failed to act;

That **portion of Claim III**, wherein Petitioner alleges trial court error in that the trial court was implicated in or aware of any jury misconduct, and failed to advise Petitioner or correct the misconduct;

That **portion of Claim III**, wherein Petitioner alleges that the jurors engaged in misconduct, including:

a) improper consideration of matters extraneous to trial;

b) improper racial attitudes which infected their deliberations;

c) false or misleading responses on voir dire;

d) improper biases which infected their deliberations;

e) improper exposure to prejudicial opinions of third parties;

f) improper communications with third parties;

g) improper communications with jury bailiffs;

h) improper *ex parte* communications with the trial judge; and

i) improper prejudgment of the guilt-innocence and penalty phases of Petitioner's trial;

That **portion of Claim V**, wherein Petitioner alleges trial court error, in that the trial court:

a) failed to inquire into the possibility of juror misconduct and remedy such misconduct;

b) refused to give proper jury instructions;

c) failed to curtail the improper and prejudicial arguments by the State;

d) allowed irrelevant and prejudicial testimony from State witnesses;

e) failed to require the State to disclose certain unspecified items of evidence in a timely manner to afford the defense an opportunity to conduct an adequate investigation;

f) declined to administer adequate curative instructions;

g) admitted privileged material into evidence;

h) excluded relevant and material evidence as hearsay;

i) allowed the State to present false and misleading testimony;

j) injected comments during witness testimony;

k) relied on misunderstandings of the law in its rulings, report and findings;

l) allowed the State to present prejudicial and irrelevant live testimony;

m) gave the jury erroneous and misleading instructions;

n) permitted the jurors to interact with alternate jurors during deliberations;

o) failed to declare a mistrial when the jury was deadlocked;

p) allowed the prosecution to introduce improper, unreliable, and irrelevant evidence which had been concealed from the defense or for which the defense had not been provided adequate notice;

That **portion of Claim VIII**, wherein Petitioner alleges that under any sub-set of all of his claims, Petitioner was deprived of a fundamentally fair trial, motion for new trial, or direct appeal, and the verdicts must be set aside because they were reached unconstitutionally;

That **portion of Claim VIII**, wherein Petitioner alleges that that the habeas court is required by O.C.G.A. § 17-10-35(b), as well as under a State and federal constitutional duty to review the entire record for error;

Claim IX, that the Unified Appeal Procedure is unconstitutional;

Claim X, that the death qualification process is unconstitutional;

That **portion of Claim XI**, wherein Petitioner alleges that the trial court erred in admitting gruesome and prejudicial photographs of the crime scene and the victim;

That **portion of Claim XI**, wherein Petitioner alleges that the prosecution's introduction of gruesome and prejudicial photographs was improper;

That **portion of Claim XXII**[15], wherein Petitioner alleges that the prosecution's reliance upon victim impact testimony was improper and affected the outcome of all stages of the proceedings; and

Claim XIII, that the trial court's guilt phase instructions to the jury were erroneous, insufficient, and confusing, and that the trial court's instruction regarding intent allowed the jurors to resolve facts through presumptions and inferences.

C. CLAIMS THAT ARE NON-COGNIZABLE

This Court finds the following claims raised by Petitioner fail to allege grounds which would constitute a constitutional violation in the proceedings that resulted in Petitioner's convictions and sentences, and are therefore barred from review by this Court as non-cognizable under O.C.G.A. § 9-14-42(a).

Claim IV, wherein Petitioner alleges that lethal injection is cruel and unusual punishment, in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, § 1, ¶¶ 1, 2, and 17 of the Georgia Constitution; and

Claim VIII, wherein Petitioner alleges cumulative error.[16]

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[15] The Court notes that this claim is numbered Claim XXII in Petitioner's Amended Petition; however, Petitioner only has fourteen claims in his petition.

[16] Alternatively, this claim is without merit as there is no cumulative error rule in Georgia. Head v. Taylor, 273 Ga. 69, 70 (2000). However, the Court has considered the combined effects of trial counsel's alleged errors in evaluating Petitioner's claims of ineffective assistance of counsel. Schofield v. Holsey, 281 Ga. 809, 812 (2007).

Lethal Injection Claim

In **Claim IV** of his amended petition, Petitioner alleges that lethal injection, both on its face and as carried out in Georgia, is cruel and unusual punishment. The Georgia Supreme Court recently addressed whether this claim was properly brought in a habeas action, holding:

> A habeas petition may only allege constitutional defects in a conviction or sentence itself, not defects in the manner in which a sentence is carried out by various state officers. See OCGA § 9-14-42 (a) ("Any person imprisoned by virtue of a sentence imposed by a state court of record who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of this state may institute a proceeding under this article [governing habeas petitions]."). Accordingly, we hold that challenges to the choice of drug or drugs to be used to carry out death sentences, which choice again is the responsibility of the Department of Corrections, along with related claims concerning the manner in which such drugs are procured and how information about the procurement process is managed, should be raised against the state officers responsible for such matters in the superior court where venue is appropriate for suit against them, rather than in a habeas court. See Hill v. McDonough, 547 U. S. 573, 580 (II) (126 SCt 2096, 165 LE2d 44) (2006) (holding that federal lethal injection claims should be brought in a civil rights action rather than as a habeas claim).

Owens v. Hill, 295 Ga. 302, 306 (2014).

Accordingly, Petitioner's claim challenging the constitutionality of his execution by lethal injection should be brought in an action against the state officers responsible for such matters in a superior court where venue is appropriate, and not in a habeas corpus action.

D. CLAIMS THAT ARE PROPERLY BEFORE THIS COURT FOR REVIEW

1. Ineffective Assistance of Counsel

Petitioner alleges in **Claim I**, various other claims, and in various footnotes to claims, that he received ineffective assistance of counsel at the sentencing phase of his trial, at his motion for new trial, and on appeal.[17] Petitioner was represented at trial and on direct appeal by Jimmy Berry and Thomas West. Therefore, Petitioner's allegations of ineffective assistance of

[17] Petitioner failed to brief or present evidence of his claims of ineffective assistance of counsel on motion for new trial or direct appeal. Accordingly, these claims are denied.

trial counsel, which were neither raised nor litigated adversely to Petitioner on direct appeal, nor procedurally defaulted, are properly before this Court for review on their merits. Additionally, Petitioner's allegations of ineffective assistance of appellate counsel are properly before this Court for review on their merits.

Standard of Review

In Strickland v. Washington, the United States Supreme Court adopted a two-pronged approach to reviewing ineffective assistance of counsel claims:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.
>
> Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.
>
> Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

466 U.S. 668, 687 (1984). See also Wiggins v. Smith, 539 U.S. 510 (2003) (reaffirming Strickland as governing ineffective assistance of counsel claims). The Strickland standard, which requires that a petitioner satisfy both the performance and prejudice prongs to demonstrate ineffectiveness, was adopted by the Georgia Supreme Court in Smith v. Francis, 253 Ga. 782, 783 (1985). See also Jones v. State, 279 Ga. 854 (2005); Washington v. State, 279 Ga. 722 (2005); Hayes v. State, 263 Ga. 15 (1993). Therefore, the Strickland standard governs this Court's review of Petitioner's ineffective assistance of counsel claims.

As to the first prong, Petitioner must show that counsel's representation "fell below an objective standard of reasonableness," which is defined in terms of "prevailing professional norms." Wiggins v. Smith, 539 U.S. 510, 521 (2003) (citing Strickland, 466 U.S. at 688). In

Strickland, the Court established a deferential standard of review for judging ineffective assistance claims by directing that "judicial scrutiny of counsel's performance must be highly deferential....[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689.

The prejudice prong requires that Petitioner establish that the outcome of the proceedings would have been different, but for counsel's errors. Smith v. Francis, 253 Ga. 782, 783. The Georgia Supreme Court has relied on the Strickland test for establishing actual prejudice which requires Petitioner to "demonstrate that there is a reasonable probability (i.e., a probability sufficient to undermine confidence in the outcome) that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Smith, 253 Ga. at 783. See also Head v. Carr, 273 Ga. 613, 616 (2001). With particular regard to death sentences, "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." Smith v. Francis, 253 Ga. at 782, 783-784. See also Sears v. Humphrey, 294 Ga. 117, 131 (2013) (explaining in determining Strickland prejudice in a case challenging a death sentence, "this Court must consider the totality of the available mitigating evidence in reweighing it against the evidence in aggravation, while being mindful that a verdict or conclusion with overwhelming record support is less likely to have been affected by errors than one that is only weakly supported by the record").

As explained in detail below, this Court has applied the guiding principles set forth in Strickland and its progeny, as adopted by the Georgia Supreme Court, and finds that Petitioner

failed to establish that trial counsel's performance "fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688. This Court also finds that Petitioner failed to establish that, but for alleged errors or omissions by counsel, there is a reasonable probability that the result of the proceeding would have been different. Id. at 694.

Qualifications of the Defense Team

In reviewing claims of ineffective assistance of counsel, the United States Supreme Court has held that "[a]mong the factors relevant to deciding whether particular strategic choices are reasonable are the experience of the attorney, the inconsistency of unpursued and pursued lines of defense, and the potential for prejudice from taking an unpursued line of defense." Strickland, 466 U.S. at 681. The presumption that trial counsel rendered adequate assistance is therefore, "even greater" when trial counsel are experienced criminal defense attorneys. Williams v. Head, 185 F.3d 1223, 1228-1229 (11th Cir. 1999) (citing Provenzano v. Singletary, 148 F.3d 1327, 1332 (11th Cir. 1998)).

Petitioner was represented at trial by Thomas West and Jimmy Berry. Both attorneys had over thirty years of experience at the time of Petitioner's trial. (HT 1:122; 2:216; 12:2937, 3017)[18]. Additionally, Mr. West and Mr. Berry both possessed extensive experience trying death penalty cases. At the time he represented Petitioner, Mr. West had handled approximately twenty capital cases, of which six had proceeded to trial. (HT 1:123-124; 12:2938-2939). At

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[18] The following abbreviations are used in citations throughout this order:

Pretrial Hearing –([date] T [page])
Record on Direct Appeal –(R [page])
Trial Transcript –(T[page])
Habeas Corpus Transcript –(HT [volume]:[page])
Petitioner's Post-Hearing Brief –(PHB [page])
Petitioner's exhibits in the habeas hearing –(PX [exhibit number], HT [habeas transcript volume number]:[habeas transcript page number]); and
Respondent's exhibits in the habeas hearing –(RX [exhibit number], HT [habeas transcript volume number]:[habeas transcript page number])

least half of Mr. Berry's fifty death penalty cases proceeded to trial. (HT 2:217). Both attorneys also attended death penalty seminars and taught seminars for other attorneys representing capital defendants. (HT 1:124-125; 2:219; 12:3020-3021). This Court finds trial counsel were experienced criminal defense attorneys and has given their investigation and presentation the appropriate deference.

Reasonable Investigation

In **Claim I** of his Amended Petition, Petitioner alleges that the pre-trial investigation conducted by his trial counsel was deficient. An attorney "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary" and what investigations are reasonable "may be determined or substantially influenced by the defendant's own statements or actions." Strickland, 466 U.S. at 691. As explained below, this Court finds trial counsel conducted a reasonable and competent investigation of Petitioner's case.[19]

Mr. West served as lead counsel on Petitioner's case although there was no formal delineation of responsibilities between trial counsel. (HT 1:126-127; 2:219; 12:2948, 3020). Mr. West testified that he asked Mr. Berry to serve as second chair due to Mr. Berry's experience both as a criminal defense attorney and in Paulding County specifically. (HT 1:126). Trial counsel maintained a good working relationship and worked well together. (HT 1:126; 2:219; 12:2948, 3023).

Trial counsel began their mitigation investigation almost immediately after their appointment to Petitioner's case. (HT 2:242). Both Mr. West and Mr. Berry met with Petitioner numerous times and discussed his background, family, and social history with him. (HT 1:128-

[19] Although Petitioner's brief focuses on trial counsel's presentation during the sentencing phase of trial, the Court has also considered the pre-trial investigation conducted by trial counsel in evaluating their strategy and performance at trial.

129, 132; 2:221; RX 13, HT 12:2950-2951). Trial counsel spoke with Petitioner about his current case, including the State's evidence against him. (HT 1:129; 2:226-227, 234; RX 14, HT 3026). Additionally, trial counsel discussed the crimes that the State intended to introduce as similar transactions with Petitioner. (HT 2:223-224; RX 14, HT:3026-3029).

Petitioner was cooperative and respectful, though reluctant to involve his family. (HT 1:134-135; RX 13, HT 12:2951). Petitioner provided the names of witnesses, many of which trial counsel interviewed, including Petitioner's family members. (HT 2:222; RX 13, HT 12:2953-2955, 2959-2960). Discussions with Petitioner and his family revealed Petitioner's mental health history; and physical, sexual, drug, and alcohol abuse within the Ledford family. (HT 2:233-234, 254-256).

A. Investigators

In addition to the investigation conducted by trial counsel, experienced private investigators, David Basham and Debra Mulder, were retained to assist with the investigation.[20] (HT 2:237; RX 13, HT 12:2957; RX 24, HT 17: 4772-75; RX 116, 67:17340-83). Mr. Basham and Ms. Mulder investigated Petitioner's background, family, and upbringing; as well as his medical, mental health, drug, and alcohol abuse history. (RX 116, HT 67:17340-17383; RX 134, HT 71-72:18156-18707). The investigators located and interviewed witnesses, obtained records, and organized the information collected by the defense team. (HT, 71:18228, 18232, 18276-18277, 18303). The record shows that Mr. Basham and Ms. Mulder maintained consistent contact with trial counsel and Petitioner throughout their investigation. (HT 70:18136-18154; 71:18156-18412; 72:18413-18707).

[20] The record shows that Mr. Basham and Ms. Mulder were also assisted by Andy Dillon, a mitigation investigator. (RX 204, HT 119:29105-29107).

Additionally, Sandra Michaels, an experienced criminal defense attorney, assisted counsel as a mitigation investigator. Ms. Michaels graduated from Georgia State University School of Law in 1987. (RX 204, HT 119:29097; T 26:68338). Subsequently, Ms. Michaels was employed for several years at the Federal Defender Program, Inc. where she practiced criminal defense. (T 26:6837-38; RX 204, HT 119:29098-29100). At the time of Petitioner's trial, Ms. Michaels had been practicing criminal defense for twenty-two years. (T 26:6837-6838).

Ms. Michaels testified during habeas proceedings that she was hired by trial counsel to locate and interview witnesses who knew Petitioner, to meet with Petitioner and develop a relationship with him and his family, and to obtain documents. (RX 204, HT 119:29104). The record shows that trial counsel introduced Ms. Michaels to Petitioner and instructed him to discuss his case with her. (RX 138, HT 73:18841). Ms. Michaels understood that her role was to:

> [G]ather everything I think I can find, everything I can get my hands on or can think about, and present to the defense team as things that might be possible to use as an explanation for the client's behavior or the criminal behavior they have now been convicted of.

(T 26:6849).

Ms. Michaels attempted "to interview as many people as possible[,]" (T 26:6841), for information regarding "mental health, alcohol, poverty, abuse, what it was like growing up, ... any family members that may have information about the client." (RX 204, HT 119:29151). The record shows that she interviewed Petitioner, his friends, family, and former employers; and, spoke with them about Petitioner's upbringing, medical, and mental health history, and his family's history with drugs, alcohol, physical, and sexual abuse. (RX 188, HT 102:25427-25456, 25485-25487; RX 188, HT 103:25499-25528, 25568-25574, 25591-25603, 25612-25704; RX

188, HT 104:25707-25824, 25839-25892; RX 188, HT 105:25895-26038; RX 204, HT 119:29151-29153, 29160-29161). However, Petitioner's family members were uncooperative. (RX 204, HT 119:29150, 29171-29172). The Ledford family was "extremely leery" of people coming to their home due to the attention Petitioner's case received, and they avoided the defense team because of media coverage. (RX 204, HT 119:29150, 29171).

Additionally, Ms. Michaels created a timeline of Petitioner's life, constructed a genogram[21] regarding mental, physical, and substance abuse issues within Petitioner's family, and summarized witness interviews for counsel. (RX 144, HT 74:19099-19238; RX 188, HT 104:25840-25875). She also worked closely with the mental health experts retained by trial counsel. (RX 25, HT 18:5065, 5069-5073; RX 188, HT 104:25713-25716, 25883-25887; RX 188, HT 105:26039-26079). Furthermore, Ms. Michaels discussed Petitioner's case with several prominent death penalty attorneys. (RX 134, HT 71:18204; RX 204, HT 119:29114).

B. Mental Health Experts

During their investigation, trial counsel discovered an incident in which Petitioner fell from the top of a tree at the age of nine and suffered brain damage. (HT 1:153). Based on the information revealed during their investigation, trial counsel's primary mitigation theory was that brain damage resulting from that incident explained his diminished frontal lobe capacity and inability to control his impulses. (HT 1:153). Mr. Berry testified that counsel attempted:

> [T]o bring in as many people as we could that fit in to what we thought the mental issues would be. I think with a jury and that kind of situation, if you've got a number of experts, then hopefully the jury starts thinking, well, they're just not throwing stuff up here, that there's actually something to his mental health problems.

[21] Genogram: "[A] multi-generational chart of Defendant's family, including comments about features of various family members which she deemed to be important." United States v. Battle, 264 F. Supp. 2d 1088, 1139 (N.D.Ga. 2003); see also "biopsychosocial" assessment: "a 'method of collecting extensive information on an individual and/or his family. Typically [the report] covers at least three or four generations' of a family." LeCroy v. United States, 739 F.3d 1297, 1309, n.10 (11th Cir. 2014) (alteration in original).

(RX 14, HT 12:3054). Trial counsel consulted, and ultimately hired, Drs. Thomas Sachy, Robert Shaffer, Larry Morris, and William Morton to assist with the development and presentation of their mitigation theory.

Counsel provided their mental health experts with numerous records relating to Petitioner and his family. (HT 1:173-174; 2:249; RX 17; RX 18; RX 119, HT 68:17498-17507, 17510-17514, 17537-17538, 17572, 17590; RX 120, HT 68:17619-17625, 17629-17630, 17632-17634, 17642, 17645, 17627, 17666-17670, 17677; RX 121, HT 68:17692-17704, 17706-17707, 17711, 17723, 17725, 17734, 17737, 17813). The record shows that the mental health experts reviewed the voluminous documents provided by trial counsel. (RX 119, HT 68:17575-17576; RX 120, HT 68:17666-17670; RX 121, HT 68:17721, 17736l). Counsel also arranged for interviews with Petitioner's family members as requested by the experts. (RX 120, HT 68:17641, 17654; RX 121, HT 68:17733).

i. <u>Dr. Thomas Sachy</u>

Trial counsel retained Dr. Thomas Sachy, a forensic psychiatrist, to assist with their defense of Petitioner's case. (RX 9, HT 11:2844, 2846; RX 13, HT 12:2969; RX 14, HT 12:3049). Counsel requested Dr. Sachy perform a neuropsychiatric forensic evaluation of Petitioner to ascertain whether there were any neurological or psychological conditions that might explain his behavior. (RX 9, HT 11:2846). Dr. Sachy interviewed Petitioner about the crime, his development, psychiatric and neurological history, medical history, use of alcohol, sexual abuse, and history of hepatitis C. (RX 9, HT 11:2850-2852; RX 19). Additionally, Dr. Sachy performed a Folstein Mini Mental Status Examination (MMSE) and a physical examination of Petitioner; and reviewed the report of a radiologist who conducted a brain MRI on Petitioner. (RX 9, HT 11:2850-2852, 2854-2855; RX 19; RX 119, HT 68:17515-17516).

ii. Dr. Robert Shaffer

Trial counsel also retained Dr. Robert Shaffer, a forensic psychologist specializing in neuropsychology. (HT 1:168; RX 12, HT 11:2908). Dr. Shaffer, who had been presented as an expert in death penalty cases since 1992, had worked with trial counsel prior to Petitioner's case. (HT 2:243; RX 12, HT 11:2908-2909). Counsel asked Dr. Shaffer to perform a psychological evaluation of Petitioner's mental condition at the time of the crime. (RX 12, HT 11:2909). Trial counsel anticipated Dr. Shaffer's findings would bolster their sentencing phase theory that Petitioner's brain damage caused him to commit the crime. (RX 13, HT 12:2970).

Dr. Shaffer performed a clinical interview with Petitioner, and questioned him regarding various symptoms in his history and his mental state at the time of the incident. (RX 12, HT 11:2910-2911, 2915). Dr. Shaffer discussed his findings with counsel, specifically the "test results showing frontal lobe injury of a specific type that relates to aggression and appreciation for the consequences of actions and things pertaining to the impact of brain functioning on one's conscience." (RX 12, HT 11:2917-2918).

iii. Dr. Larry Morris

Dr. Larry Morris, a clinical psychologist with extensive experience as an expert in several death penalty cases, was also retained by trial counsel. (RX 11, HT 11:2885-2886). Counsel asked Dr. Morris to evaluate the possibility of child sexual abuse and any impact that may have had on Petitioner. (RX 11, HT 11:2888). Dr. Morris interviewed Petitioner, his mother, his stepfather, his brothers Billy and Donald, and his sister. (RX 11, HT 11:2889; RX 14, HT 12:3250-3270; RX 120, HT 68:17654; T 27:7129-7130). The primary theme during these interviews was Petitioner's childhood experiences. (RX 11, HT 11:2890). Dr. Morris inquired "about all kinds of experiences, including abusive experiences," such as sexual, verbal,

emotional, drug, and alcohol abuse. (RX 11, HT 11:2890-2891). Dr. Morris also spoke with Petitioner about the events on the day of the crime. (RX 11, HT 11:2893-2895). Dr. Morris reviewed his findings and discussed his testimony with counsel before trial. (RX 11, HT 11:2898-2899).

iv. Dr. William Morton

Additionally, because there was evidence that Petitioner was intoxicated on the day of the crime, counsel retained Dr. William Morton, a psychopharmacologist and expert on the effects of alcohol. (RX 10, HT 11:2865, 2867-68; RX 13, HT 12:2971-2972). Both Mr. West and Mr. Berry had previously worked with Dr. Morton, who had testified in approximately sixty death penalty trials. (RX 10, HT 11:2865; RX 13, HT 12:2964; RX 14, HT 12:3052). Counsel requested Dr. Morton review Petitioner's records and meet with Petitioner to determine whether alcohol was an issue in the crime. (RX 10, HT 11:2868). Trial counsel also advised Dr. Morton to be able to discuss aspects of alcoholism to educate the jury at sentencing. (RX 10, HT 11:2868).

Trial counsel provided Dr. Morton with "a tremendous amount of information regarding [Petitioner's] past, as well as present history." (RX 10, HT 11:2870). In addition to the materials provided by trial counsel, Dr. Morton requested and received additional information from Ms. Michaels regarding Petitioner's family, Petitioner's medical treatment, and the evaluations conducted by the other experts. (RX 10, HT 11:2869). Dr. Morton reviewed Petitioner's complete substance history and spoke with Petitioner about:

> [H]is whole substance use history, his treatment history, his family history, specifically around alcohol, and then any other substances that he may have taken, and specifically ... his alcohol or drug use during the week of the crime, and specifically ... any substances used the day of the crime.

(RX 10, HT 11:2871). Dr. Morton also discussed his findings and trial testimony with Petitioner's defense team. (RX 10, HT 11:2874-2875).

Reasonable Strategy

Trial counsel's strategy for the guilt-innocence phase of Petitioner's trial was to "front load" their mitigation evidence. (HT 2:236). As Mr. West testified during habeas proceedings, "there was a lot of evidence that [Petitioner] did commit the crime, and I didn't think that we'd be successful in prevailing on a not guilty verdict." (HT 1:142). Mr. West explained that "it was a real difficult guilt innocence defense," because the State "had eyewitnesses – they had the previous woman who was attacked by him under identical circumstances. They had his blood, her blood, the victim's blood on him; the fact that his penis had been bitten. It was difficult to refute that." (RX 13, HT 12:2957). In order to minimize the impact of the similar transactions, trial counsel intended to show that Petitioner was cooperative, was not violent, and was intoxicated at the time of the previous crimes.[22] (HT 2:226, 236-237).

Trial counsel's primary sentencing phase strategy was to show the jury that Petitioner had voluntary and involuntary brain damage, which diminished his frontal lobe capacity and prevented him from controlling his impulses. (HT 1:153-154). Additionally, trial counsel intended to use their expert witnesses to show that Petitioner had "psychiatric issues, based a lot on his upbringing and also his drug and alcohol abuse." (HT 2:241). Trial counsel also planned to have Petitioner's family members testify at sentencing to let the jury "know that there are people out there that are going to miss [Petitioner], that care about [Petitioner], that will be there for [Petitioner]." (RX 14, HT 12:3055).

[22] Counsel considered but ultimately rejected presenting Petitioner's voluntary intoxication as a guilt-innocence phase defense. (HT 1:141; RX 134, HT 71:18169, 18279).

This Court finds that trial counsel formulated a reasonable strategy after completing their investigation and, as explained in detail below, presented evidence consistent with this theory at Petitioner's trial.

Guilt-Innocence Phase Presentation

As previously discussed, trial counsel's guilt-innocence phase strategy involved the presentation of mitigation as the evidence of Petitioner's guilt was overwhelming. Trial counsel also attempted to build their own credibility with the jury from the beginning of the trial. When the district attorney addressed Petitioner's rape of RC and attack of VP during the State's opening argument, counsel interrupted to request that the trial court read the charge regarding the purpose of similar transaction evidence, which the trial court subsequently read to the jury. (T 18:4728-4730). Additionally, in the defense's own opening argument, Mr. West informed the jury about numerous crimes that counsel kept the State from mentioning in its opening statement:

> [Petitioner]'s been in trouble pretty much all of his life. He has been in prison or jail probably half of his life. He's 47 now. He's been convicted of crimes beginning as a juvenile up until this case.
>
> And I want you to know that there'll be evidence that he has been convicted of armed robbery down in Florida, criminal damage to property in Florida, this is back in the '80's, probation violation in Florida, larceny up in Gratiot County, Michigan, felonious assault up in Michigan, a DUI here in Marietta, a DUI in Cobb County, aggravated battery, a burglary in Cobb County, felon[] in possession of a firearm in Dallas, possession of stolen property, breaking and entering an unoccupied building, and you heard about the rape conviction here in Paulding County.

(T 18:4735-4736).

The State presented evidence that on the morning of the crime, Petitioner told his family he was going to work, but instead he purchased beer and consumed it near the Silver Comet Trail; knocked the victim from her bicycle and dragged her off the trail into the woods; stripped her from her waist down and pulled her shirt to expose her breasts; forced his penis into the

victim's mouth; and then beat her to death by stomping on her face, neck, and chest. Ledford, 289 Ga. at 71.

The similar transaction evidence during the guilt-innocence phase showed that Petitioner raped RC in Paulding County in 1991 and attempted to attack a woman, VP, who was riding her bicycle on the Silver Comet Trail prior to the victim's murder. See Ledford, 289 Ga. at 83-84. Mr. West recalled the powerful testimony of RC, who cried and pointed from the stand at Petitioner during her testimony to identify Petitioner as the man who raped her. (HT 1:149-150). As the Georgia Supreme Court noted, the lapse in time between Petitioner's rape of RC and the victim's murder did not erode the relevance of RC's rape during the guilt phase, "especially because that lapse is explained by Ledford's ten-year incarceration for the rape." Ledford, 289 Ga. at 83.

In their closing argument, Mr. Berry challenged the State's case, pointing out omissions that had been made during the investigation, including the State's failure to recover any testable DNA from the victim's decomposed body. (T 23:6271). Counsel also questioned the credibility of VP, and argued that if Petitioner struck the victim simply to force her to release his penis from her clenched jaw, Petitioner lacked the intent to commit malice murder. (T 23:6260-6279).

Reasonable Sentencing Phase Presentation

This Court finds that trial counsel made a reasonable presentation during the sentencing phase of Petitioner's trial based on their strategy and the information discovered during their investigation. As Mr. West explained during the proceedings before this Court, trial counsel's primary mitigation strategy was to present evidence that Petitioner was unable to control his impulses due to brain damage that Petitioner had suffered which resulted in "diminished frontal lobe capacity...[a]nd perhaps the jury would not want to kill someone that had done things that

were not his active volition but was a result of brain damage." (HT 1:153). The record reflects that trial counsel also met with the witnesses prior to trial and prepared them for their testimony. (PX 69, HT 10:2498, 2499, 2510-2511, 2526-2531; RX 10, HT 11:2874-2875; RX 11, HT 11:2898-2899).

During their sentencing phase opening statement, Mr. West told the jury that Petitioner was a product of his dysfunctional upbringing, which included sexual and alcohol abuse. (T 24:6403-6408). Mr. West explained to the jury that counsel would present evidence that Petitioner suffered from brain damage after he fell out of a tree at a young age, along with evidence of Petitioner's dysfunctional upbringing and alcoholism. (T 24:6404-6408). Mr. West emphasized that all of these issues impaired Petitioner's decision making processes. (T 24:6405-6410). Mr. West assured the jury that this evidence was not presented to garner sympathy for Petitioner, but rather to show that Petitioner did not choose to have issues with mental health, women, sex, and alcoholism. (T 24:6405-6410). Mr. West informed the jury that they would hear from medical experts who had examined Petitioner in an attempt to explain why he committed the crime, "[a]nd the conclusion will be that he's damaged." (T 24:6405). Mr. West told the jury:

> [Petitioner's] brain is damaged. And he did not choose to have brain damage. He didn't choose to have lesions on the frontal lobe of his brain which affect the way he processes information, which affects choices he makes, judgments that he makes.

(T 24:6405-6406).

After summarizing the evidence that their mental health experts would present, (T 24:6406-6408), Mr. West told the jurors that they would hear evidence of counsel's study of Petitioner's entire family, which included a genogram demonstrating Petitioner's family's mental illness, alcoholism, and drug use. (T 24:6409-6410). Finally, Mr. West admitted to the jurors

that after the presentation of the evidence, the defense would ask for a life sentence for Petitioner to "go to prison and get the kind of treatment that he hasn't had." (T 24:6411).

The State's Aggravation At Sentencing

The State presented the testimony of fifteen witnesses at sentencing. (T 24:6412-6485; 25:6580-6662). Evidence was presented that Petitioner preyed on women throughout his life, including the testimony of TC, who Petitioner had abducted in 1980; FH, into whose home Petitioner had attempted to force his way in 1985; and LM, who Petitioner attacked after breaking into her house in 2002. (T 24:6412-6455). The State also presented the testimony of other witnesses regarding Petitioner's improper sexual behavior towards women and children and played for the jury recordings of sexually explicit telephone calls Petitioner placed from the jail to his fourteen-year-old niece while awaiting trial. (T 24:6457-6458, 6480-6481; 25:6580-6583, 6656-6657).

Additionally, the State presented the victim impact testimony of the victim's husband, (T 25:6596-6602), her sons, (T 25:6603-6607, 6615-6619), her daughter, (T 25:6607-6613), the victim's mother, (T 25:6619-6623), and her sister. (T 25:6623-6628). The record reflects that after the victim's daughter testified, counsel approached the bench and indicated that she had cried during most of her testimony. (T 25:6613). Mr. Berry also approached the bench after the victim's sister testified to note the number of jurors crying during the testimony of the victim's mother and sister. (T 25:6629).

Trial Counsel's Sentencing Phase Presentation

Following the State's presentation of aggravation at the sentencing phase, trial counsel presented fifteen witnesses in mitigation, including eight of Petitioner's family members. The first witness presented by trial counsel was Donald Ledford (hereinafter "Donald"), Petitioner's

oldest brother. (T 25:6666-6667). Donald testified that the family moved frequently when he and Petitioner were children, and he attended more than ten different elementary schools between first and sixth grade, often moving mid-school year. Id. at 6671-6676. The family moved several times both around Michigan and also to Pennsylvania, Ohio, Florida, and Tennessee. Id. at 6677-6678. He testified that the family would pack all of the belongings into a U-Haul, "usually the kind you pull behind a car," and move to another house. Id. at 6678-6679. Donald's mother and the children lived off and on with the children's grandparents. Id. at 6692-6693.

Donald's biological father "used to get drunk and beat everybody up, threaten people." (T 25:6681). Donald testified that one night when he was nine years old, he awoke and his father was holding a knife to his throat. Id. at 6694-6696. His father then threatened to kill him. Id. Afterward his father left the family. Id. at 6696.

Subsequently, the children's mother was placed in a mental hospital for mental health issues, and the children were placed in an institution in state care. (T 25:6698-6700). Donald and Petitioner were placed together in one institution, but did not know where the other siblings were. Id. at 6702-03. When their mother was released from the hospital, she regained custody of the children; however, about a year later Donald and his siblings were returned to foster care because their mother could not provide for them. Id. at 6703-05. The children were separated again; however, their mother regained custody approximately one month later. Id. at 6704-6705.

According to Donald, around the age of eight or nine, Petitioner fell out of a tall tree at their grandparents' farm and landed atop a garage, rolled off, and eventually landed on the ground. (T 25:6682-6684). Donald thought Petitioner was dead because he was not moving. Id.

at 6685-6686. Petitioner was taken to the hospital and remained there for approximately one month, and wore an upper body cast for another month. Id. at 6686-6688.

Donald testified that, prior to Petitioner's fall from the tree, Petitioner "used to play with us. You know, we'd run around, especially at the farm. We were all happy there. We'd play in the barn." (T 25:6690). However, after Petitioner's injury, "[h]e just wasn't the same. He didn't talk to us the same way. He didn't talk that much. He was more withdrawn, timid kind of." Id. at 6689. "He wanted to be by himself all the time, or it just seemed to me that he couldn't fit in with us or he couldn't feel comfortable." Id. at 6690. Donald testified that after the injury Petitioner had severe migraine headaches and frequently wet the bed. Id. at 6689-6690.

When Donald was around twelve years old, their mother divorced their biological father, remarried, and moved the family to Florida. (T 25:6707-6709). Shortly afterwards the children's mother divorced and married her ex-husband's brother, Leo, and the family moved back to Michigan. Id. at 6710-6713. Subsequently, when Donald was 16, he dropped out of school and moved to Tennessee to live with his biological father. Id. at 6713-6714

Donald and his brothers all drank, and both he and Petitioner began drinking in their early teens. (T 25:6691). Donald agreed that they had drinking problems. Id. at 6714, 6716. Donald said "it seemed like [Petitioner] was drinking for a different reason. To me it always seemed like he was medicating himself." Id. at 6716-6717. Donald testified that when Petitioner drank he became angry and violent. Id. at 6692. "He just gets evil, mean, fights. You can't talk no reason to him. It's just like he's out of his head or something." Id. at 6717. Donald testified that Petitioner would get into trouble when he drank. Id. at 6716. Donald explained that he and Petitioner were involved in an alcohol-influenced robbery and kidnapping in Florida. Id. at 6715-6716.

Donald further told the jury that Petitioner had a problem with women and that "he don't know how to be around them." (T 25:6719). Donald asked the jury to spare Petitioner's life and stated "I think being in prison the rest of his life with never a chance to get out would be better than taking his life. I don't believe he intentionally took Ms. Ewing's life. I don't believe he went there with that on his mind." Id. at 6719-6720.

Trial counsel then called Petitioner's younger brother, William Ray Ledford, Jr. (hereinafter "Billy"). (T 25:6730-6731). Billy testified that he was born in Pontiac, Michigan and that his earliest memory was living with his grandparents, mother, brothers, and sisters in a small farm house. Id. at 6733-6734. Their home life lacked structure and Billy described their house as crowded and chaotic. Id. at 6734, 6736-6737, 6745, 6758, 6760. Billy recalled being separated from his siblings and placed in foster care when he was young. Id. at 6735.

Billy testified that he did not have childhood memories of his biological father and he never lived with his biological father. (T 25:6734). However, Billy did spend some time with his biological father when he was older. Id. at 6745, 6748, 6753. Billy described his biological father as a violent alcoholic. Id. at 6745, 6754-6757. Billy explained that his biological father:

> [W]as okay to be around while he was drinking. But my dad, if he was around another woman, like his wife or a girlfriend, he was mean. He was mean to her. And he could be very mean to me if I said anything to him about the way he was talking or treating whoever he was around. But as far as just me and him, he was fine. It's when he got around other people while he was drinking my dad could get very mean.

Id. at 6754. Billy described a physical altercation between his father and his step-mother. Id. at 6754-6755. Billy's mother also told him that his biological father was violent towards her. Id. at 6755. Billy's maternal uncles also had drinking problems. Id. at 6757-6758.

Billy could not remember when he first started drinking, but testified that his first alcohol-related trouble occurred at the age of eleven or twelve, when he ran away with Donald

and Petitioner, committed automobile theft, and was placed in a juvenile detention center. (T 25:6737-6738). Billy testified that each incident with Donald and Petitioner involved alcohol, including the robbery and kidnapping in which Billy participated. Id. at 6740, 6742-6743. Petitioner was "a real good guy when he ain't drinking. Drinking affects him like nobody I've ever seen." Id. at 6746. "It just changes him. It makes him more mysterious. It makes it like he's thinking about something all the time." Id.

Billy and his brothers often skipped school. (T 25:6738). Billy could not remember how many different schools he attended:

> I went to three different schools in Alma [Michigan]. It was elementary. But see, it was scattered out in our life span. But we'd move back and forth from Florida, and I'd go to Tennessee. And in Florida we went to several different schools, because when we'd move we'd go to a different district.

Id. at 6739. Billy believed that the family moved because, "I don't think mom had the money or my dad didn't have work, my step-dad. And rent would come due and we'd have to move." Id. at 6739-6740. Billy testified that the family would stay at a house "[u]ntil work run out or until we got in trouble or something caused use to leave." Id. at 6740.

Billy recalled Petitioner falling from a tree in Michigan. (T 25:6740-6741). He testified that "[i]t broke him up and put him in some kind of body cast or something." Id. at 6741. Billy remembered Petitioner's lengthy hospitalization, but he could not recall whether Petitioner's personality changed after the accident because his memory of the event was vague. Id. at 6741-6742. Finally, Billy asked the jury to spare Petitioner's life:

> I would just ask that you wouldn't put him to death. I mean, I know Mike has been in jail pretty much his whole life. The way I figure it, that's all he knows. He could do more good by being alive if he shows everybody that he'd change – or not change but try to make something good out of his life from here on out.

Id. at 6747.

Trial counsel next called Petitioner's younger sister, Sherri Byess. (T 25:6763-6764). Ms. Byess did not remember living with her biological father, and her first memory of a father was her step-father. Id. at 6765, 6770-6771. She did not remember Petitioner's fall from a tree at the farmhouse in Michigan, but she recalled seeing him in a cast. Id. at 6767-6768.

Ms. Byess remembered three separate occasions where she was placed in state care as a child. (T 25:6769). The first time she was placed in a group home with all of her brothers was in Pontiac, Michigan, and they stayed there approximately three weeks. Id. at 6769-6770, 6774. She did not know why they were placed in the group home, but she knew her mother experienced hardship attempting to raise six kids on her own. Id. at 6770. The second and third times she was placed in foster care with her youngest brother, Daniel, and the four other brothers were placed in a different home. Id. at 6772. She described her foster parents as "absolutely wonderful to me and my brothers." Id.

Ms. Byess testified that the family moved around a lot when she was a child, "especially when the landlord would find out how many kids [her mother] had in the house." (T 25:6775). Ms. Byess explained that, because they moved so many times, she could not remember the names of the elementary schools she attended because she "was never there long enough to even know the name of the school." Id. at 6776.

Ms. Byess testified that everyone drank within her family, and she recalled that "every time there was a get together they were drinking." Id. at 6768. This would lead to fights between her uncles, a fairly common occurrence. Id. at 6768-6769. Ms. Byess testified that all of her brothers had drinking problems. (T 25:6776-6777). Ms. Byess was concerned about Petitioner being at her house because of his drinking. Id. at 6779-6780. Alcohol "makes him crazy. I mean, like now he's – that's the Mike I know right there. And when Mike is drinking, if

you'll look at the pictures the day he got locked up, that's the Mike drinking. That's the Mike that you just don't know who he is." Id. at 6781-6782.

From age four to age fifteen Ms. Byess was sexually assaulted by her maternal uncle, Bill Dougherty. (T 25:6833-6836). She testified that the assaults happened in "different places, wherever we lived," and that "he just always – he was the one that always wanted to babysit us kids, so my mother would leave us with him if she went to work. He just – everywhere we ever went, he was always there." (T 26:6834). Ms. Byess testified that her uncle raped her, stating "I mean, that's all I remember of my childhood is just him. I hate him." Id. This continued until she was eight years old when she reported him to her school, after which Dougherty was imprisoned. Id. at 6834-6835. However, "when he got out it was like he's still part of the family and, you know, he would come around. He would stay at our house," and the sexual abuse continued until Ms. Byess was fifteen. Id. at 6835. No one protected her from her uncle. Id.

Prior to the crime, Ms. Byess knew Petitioner was on probation and attempted to contact Petitioner's probation officer on three separate occasions. (T 25:6781). Ms. Byess testified that she was concerned because Petitioner "was drinking excessively." Id. Ms. Byess believed by calling Petitioner's probation officer, she could "help him by getting them to get him, to lock him back up, to get him help, because when he was locked up he wasn't drinking." Id.

Ms. Byess testified that she was never afraid of Petitioner and that she loved him. (T 25:6782). She told the jury that she wished that she could take back Petitioner's actions and apologized for them. Id. Finally, Ms. Byess told the jury "I just pray that y'all can find it in your heart not to kill him." Id.

Trial counsel then called their mitigation investigator, Sandra Michaels, to testify and present evidence to the jury that she uncovered during her background investigation. (RX 13, HT 12:2969-2970). Ms. Michaels explained the role of a mitigation specialist for the jury:

> A mitigation specialist is a person, it can be either an attorney or someone that has some kind of specialized training, that helps prepare a life history of the person that's accused of the crime, in this case Mr. Ledford. What you do is you gather up as much information as possible about the person and their family. You gather records, documents, family medical history, family mental health history, and you work with mental health professionals or other professionals to prepare the mental health case.
>
> And the purpose of the mitigation person is to present a picture of the individual accused of the crime and, in this case, convicted of the crime, and to present not an excuse for their behavior but an explanation for their behavior. And the explanation for the behavior encompasses every facet of their life and their family's life, where they came from, and all sorts of external factors that brought them to that point in their life where the crime occurred.

(T 26:6839).

Ms. Michaels obtained a large number of records, including medical and criminal history records, and emphasized "every record I could obtain, I did." (T 26:6841, 6843). She located and interviewed Petitioner's family members and added that, as a mitigation specialist, "[y]ou have to interview as many people as possible. It's not just the people that come into court. You try to interview as many individuals as you can." Id. at 6841-6842. Ms. Michaels interviewed Petitioner's biological father and described him as a "lying drunk, lotto drunk" living in government housing,[23] who "can't walk, can't move, can't move from a chair, is about to lose his legs from diabetes." Id. at 6902. Many of the people who Ms. Michaels interviewed could not attend court for health reasons. Id. at 6842.

Ms. Michaels also created a genogram during her investigation and explained:

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[23] Id. at 6842

> A genogram is basically a fancy word for family tree. It's the family tree or the history of the person that's – the individual you're talking about. Here, of course, Mr. Ledford. And what you do is you try to go back not too far, because it gets confusing, but as many generations as you can back and if it's appropriate in the circumstances, and it was in this case, a generation forward to look for patterns of behavior or patterns of hereditary situations to show or explain the history of the individual.

(T 26:6844). She testified that the significant factors in Petitioner's family history were "alcoholism, drug addiction, mental health issues, and health issues related to the alcohol or drugs or the mental health." Id. at 6900. Counsel tendered the genogram into evidence. Id. at 6896-6898.

Based on her investigation, Ms. Michaels determined that Petitioner's family had "a long history of alcoholism and debilitating alcoholism" in addition to mental health problems. (T 26:6843). Regarding the mental health history of Petitioner's family, "the initial overwhelming factor that came out was there was severe alcoholism that ran on both sides, both paternal and the maternal side." Id. at 6894-6895. Ms. Michaels noted that "the younger generation became more addicted to drugs, as opposed to the older generation it was alcohol. Based on both the drug and the alcohol issues, there was a lot of criminal convictions and activity related to theft, DUIs, open containers." Id. at 6895.

Ms. Michaels told the jury that Petitioner and his siblings have hepatitis C, "which is related to abuse issues, substance and alcohol." (T 26:6900- 6901). She testified that Petitioner's mother "has severe health issues not related to substance abuse but severe issues related to the mental health issues surrounding the family," noting that Petitioner's mother has a history of "nervous breakdowns and agoraphobia" for which she received treatment. Id. at 6901. Petitioner suffered from mental health and drug issues, his brother Mark had problems with

drugs and alcohol, and his brothers Billy and Daniel had mental health, alcohol, and drug issues. Id. at 6901-6902.

During Ms. Michaels's testimony, counsel authenticated and tendered numerous records, including Petitioner's juvenile records from Alma, Michigan; Petitioner's medical records concerning his fall from a tree; Petitioner's mental health and competency records relating to his guilty plea in Tennessee to criminal trespass; and criminal records from Michigan regarding Petitioner, his maternal uncles, and cousins. (T 26:6866-6884). In addition to describing the records, Ms. Michaels shared pictures with the jury of the areas where Petitioner's family lived, as well as pictures of a company where Petitioner once worked. Id. at 6884-6893.

Following Ms. Michaels, counsel presented Dr. Rokeya Farooque, a forensic psychiatrist at Middle Tennessee Mental Health Institute who evaluated Petitioner pursuant to court order in August, 2002. (T 26:6928-6930). At the time of that evaluation, Petitioner was charged with aggravated kidnapping and aggravated burglary;[24] and, the trial court requested that Petitioner be evaluated concerning his state of mind at the time of the crimes and whether he had diminished capacity. Id. at 6930. Dr. Farooque testified that at that time of her evaluation, Petitioner had been found competent to stand trial and that there was no support for a defense of insanity. Id.

Dr. Farooque testified that, under Tennessee law, diminished capacity is a defense concerning a defendant's state of mind at the time of the crime. (T 26:6930). She explained that diminished capacity means whether, at the time of the offense, a defendant's "mental condition was such that they were not able to form the mental capacity needed for that specific crime." Id. She testified that diminished capacity can be caused by mental illness, mental retardation, or intoxication. Id. Dr. Farooque had to determine:

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[24] The victim in this case was LM, who was called as a State's witness during the sentencing phase to provide the jury with details about Petitioner's attack. (T 26:6936; 24:6432-6445).

> [W]hether Mr. Ledford was either suffering from any mental illness, mental retardation, or any other kind of mental impairment, or he was having any problem with drugs and alcohol that at the time of the crime he was either not able to or able to form the accused mental condition to commit that specific crime and that was intentional and knowingly.

(T 26:6931).

Dr. Farooque opined that in August 2002, Petitioner "did not have any diminished capacity for any mental illness or mental retardation or any other kind of mental impairment." (T 26:6931). However, Petitioner's mental capacity for his crimes in August 2002 was diminished based on alcohol intoxication. Id. at 6931-6932. Counsel authenticated and tendered Dr. Farooque's entire file from August 2002, which included the evaluative history she took from Petitioner and his family members. Id. at 6932-6933.

On re-cross examination, Dr. Farooque testified that she diagnosed Petitioner with alcohol dependence. (T 26:6942-6943). As she explained, a person suffering from alcohol dependence:

> [I]s heavily dependent on alcohol, that they just don't drink it for recreation, they drink it – they cannot control their drinking. They drink heavily, and they get into trouble with the law. While they're drinking, they get into trouble with the family interaction, family relationships. Still they continue to drink, and they cannot stop drinking.

Id. at 6943.

Trial counsel then presented testimony from Dr. Morton, an expert in the field of psychopharmacology. (T 26:6949). Dr. Morton explained that a psychopharmacologist studies both positive and negative effects of any substance that would affect the brain, including prescription medicines, over-the-counter medicines "like alcohol and nicotine," and illicit drugs. Id. Trial counsel requested Dr. Morton's assistance in determining whether there were any

issues regarding substance use or alcohol that might have affected Petitioner's behavior. Id. at 6950, 6961.

Dr. Morton testified that a person with alcohol or substance abuse has a different biochemistry and behavior than a person without addictions. Id. at 6969. He explained that alcohol had "incredible effects, negative effects, on [Petitioner's] brain and his behavior. Ethyl alcohol ... essentially affects every cell in the body. There's hardly a cell that it doesn't affect. So consequently it would affect almost every cell in the brain." Id. at 6970. Dr. Morton defined alcoholism as "a chronic relapsing brain disease characterized – what you see is people compulsively use; they compulsively think about it; they compulsively crave alcohol." Id. at 6970-6971.

Dr. Morton analyzed Petitioner's medical history:

> Michael's brain, when I looked at it to help me understand some of the behavior, looking at if I was developing a treatment plan for Michael, I looked in his history. And I knew he fell from a tree and he broke some arms. I know that he hit his head. I know in 1972 he probably got the standard of care which was a CAT scan and didn't show anything there, did not show that there was anything broken, although I imagine a close-head injury did juggle his head a little.
>
> He has Hepatitis C virus, and while it affects the liver, mostly inflaming the liver, it can also affect other parts of the body. And there's a fair amount of information coming out that shows how Hepatitis C, this virus, can affect different aspects of the brain in terms of thinking and cognitive ability.
>
> And alcohol, his long history of alcohol, what we know and what I know with him is that it does cause people to lose inhibitions. In general, people have learned or been taught to not act a certain way. And when they drink, alcohol has a tendency to reduce those inhibitions. So people say things, they talk louder, they do things that they normally would not have ever done because those inhibitions are kind of dissolved away.

(T 26:6971-6972).

Dr. Morton looked at Petitioner's psychiatric effects, and found "tremendous sedation." Id. at 6973. He testified that Petitioner "basically drinks until he falls asleep. That's his general

ways of drinking. He has irritability and restlessness when he drinks. There's a long history of violence when he drinks." Id. According to Dr. Morton, Petitioner began drinking regularly between age twelve and thirteen, and by age fifteen Petitioner was drinking every day on a regular basis. Id. at 6984. Dr. Morton testified that by age fifteen, Petitioner was "able to either steal or get someone to buy alcohol for him. His mother doesn't want him to steal, so she buys alcohol for him just so he won't steal," noting that it "increase[d] to a point that he's drinking about 24 cans a day, a case a day." Id. at 6984, 6975. Dr. Morton explained that Petitioner's family enabled his drinking habits by creating a program for him to drink in an attempt to control his drinking. Id. at 6985.

Petitioner smoked marijuana "daily at some point growing up, and then it diminished off. It was not something he could afford," (T 26:6984-6985), and Petitioner tried cocaine and LSD but did not continue to use either, because Petitioner preferred alcohol. Id. at 6985. Regarding Petitioner's alcohol abuse, Dr. Morton believed:

> [T]here wasn't a part of his life that really wasn't affected. I couldn't find anything that really wasn't affected by his alcohol .... He has problems at work, keeping a job, his family. There were problems. And basically I could not see any evidence that he has any friends. And part of that had to do with his alcohol use, and possibly some of it was why he drank, not having any friends. So it's hard to know which came first sometimes. Financial and legal problems were almost always present.

Id. at 6974.

Dr. Morton discussed the symptoms of alcoholism, such as struggling with how much and how long a person drinks; struggling with cutting down alcohol intake; constantly seeking, using, and recovering from alcohol use; decreasing activities with family and friends; continuing to drink despite medical or mental health problems; and increasing tolerance of alcohol consumption. (T 26:6974-6975). Although Petitioner did not have any major psychiatric

problems and never sought treatment, Petitioner suffered from other symptoms. Id. at 6975-6976. Dr. Morton noted Petitioner:

> [S]truggled with trying to cut down. He has significant denial that he even has this disorder. He would frequently think, "Well, that's not me. I can control it." I think he might still believe he could control it. I think that might still be going through his head that, "if I got some alcohol, I could control it."

(T 26:6976).

Dr. Morton testified that no one has determined the cause of alcoholism, but he noted that a number of factors relate to the disease such as genetics, developmental history, stressors including physical abuse or an untreated psychiatric condition, and drug use. (T 26:6977-6978). A number of these factors were present in Petitioner's history. Id. at 6978, 6988-6999. According to Dr. Morton:

> He has a father that clearly has alcoholism. He has uncles on his father's side that clearly have alcoholism that have been treated. He has a mother who has abused alcohol and maybe other substances from 1976 records. It was not clear. She doesn't abuse it now. She rarely drinks now. So maybe she didn't have the disease after all. But he has four brothers that all have this disease. Some of them have alcoholism and other substances. And sometimes their alcoholism has diminished as they've used other substances. His sister escaped this. He has cousins that are alcoholics. He has some genetic material to his two sons.

(T 26:6978).

> Developmentally, I know that he had access to alcohol early from three sources I saw, that he drank a bottle – not a bottle but he drank a half a glass of vodka. And essentially people cheered him on, "[Y]ea! You can do it Michael." Basically he's three to four years old. His remembrance is somewhere around six years old of that. But it's documented that, "You can do it. That's cool, Michael. Yeah, the little boy can hold his liquor." So he also had exposure as early as nine years old. And six years old he would steal a beer, and it probably wasn't until age 13 that he started drinking on a regular basis. But developmentally he had some factors there that I considered worth looking at.
>
> Environmentally, he grew up in what was described as a chaotic household. That was described by DHS workers. Environment was of excessive drinking. Violence was kind of glorified. That's not my word. That's how I saw alcohol and

drinking. If you beat up people, that was cool. And if it happened to involve women, that was okay, too. It was okay if you were a little rough with women.

Environmentally, there are a number of things going on, constant moving. One brother said he had probably moved about 100 times. When you're young it's helpful to have a house with a room that you can kind of count on being in. Environmentally, there were a lot of factors going on. It helps me understand later on why alcohol might be comforting to this man.

Sometimes he would find as many as 14 people living in his house, a small house, which sounds crowded to me. It sounds chaotic to me. His father was not there after about age seven. So you could say that was either good or bad, but I think everyone wants to have a father whether they're good or bad. You want to have your father there. Well, his father wasn't there because he divorced, and secondary to his alcoholism, and probably did not inflict the pain that he was inflicting on Michael.

Stressors, when I look at stressors I look at lack of structure in his house, lack of role models, lack of seeing people handling themselves. Insults, stressors, there was physical abuse sometimes from his mom, sometimes certainly from his father. There was psychological abuse from his mother and from his father. And there was one incident of sexual abuse. And you might say well, just one. Well, I've learned working on the unit, on an alcohol and drug treatment program, probably 50 to 70 percent of the people that come on my unit have a history. And sometimes it's continuous; sometimes it's just once. So it's really different for each individual how that response is of sexual abuse. Personality – another insult I had to look at was when he fell, yes, he broke his arms. What did it do to his brain? It's not clear. But falling and hitting your head is not good for you.

Personality-wise, Michael is a loner. I'm not sure exactly why. He doesn't feel comfortable around people. I don't know if it's overly anxious or overly anxious about not knowing how to react and interact with people ... So personality, there's certain factors there that catch my attention.

Psychiatric symptoms, he doesn't have as many as I might expect. I know his mother has panic disorder and agoraphobia....

(T 26:6979-6981).

Dr. Morton noted that on the day Petitioner was arrested, "he had alcohol in his blood, .014. Drug use that day, somewhere between three and five of these 22-ounce cans of Bud Ice" which contained 6.9 percent alcohol. (T 26:6994). Dr. Morton believed that alcohol use affected Petitioner's brain function. Id. at 6994-6996. Counsel asked Dr. Morton whether Petitioner's

alcoholism played any role with the sexually inappropriate phone calls Petitioner made from the detention center to his fourteen year old niece; according to Dr. Morton, the phone calls were:

> [A]n example of the effects of alcohol on the brain affecting the executive parts of the brain, the cortex areas of the brain, such that people don't think through logically. What would be the consequences of me saying something inappropriate on a recorded phone call, could this hurt me later, doesn't see that, doesn't think that through, doesn't see the consequences, doesn't see that that's something he should not do. And that's part of what you see with alcohol affecting that part of the brain, essentially puts that part of the brain [to sleep]. And you might see that – even though alcohol is out of your body in about eight or nine hours totally, it's gone totally, but you're seeing the effects of alcohol which some could be permanent and some could resolve and get better over time.

Id. at 6998-6999.

Finally, Dr. Morton summarized his testimony for the jury:

> Again, these were some of the issues that I saw with Michael's brain. And I think of these factors as almost having a domino effect. Again, there's not one factor that helps totally explain his or anyone's alcohol use. But I think this domino-type effect where one thing leads to another is something to consider. I see Michael as someone not making decisions. When he does make them, they're poor. He does not think in making good judgment. He's very aggressive when he drinks, and there's a tremendous amount of violence. It's been there for a while, and it's only getting worse. When I see what he does, his behavior is almost like an angry 12 year old. So it's very much out of character for most human beings. When he doesn't drink, his behavior is significantly different.

(T 26:6996).

Following Dr. Morton, counsel presented Alice Romanek, a licensed clinical social worker from Highland Rivers in Paulding County, Georgia. (T 26:7018-7019). Ms. Romanek testified that Petitioner was referred to Highland Rivers by his parole officer for a substance abuse assessment, and that on October 8, 2003, Petitioner came to the facility for a diagnostic assessment. Id. at 7019, 7021-7022. In his diagnostic assessment, Petitioner informed Ms. Romanek:

> [H]e had been divorced for the past 18 years, that he had two children, that he had been living with family for the past three years and he was satisfied with that, that

> he had a close relationship with his mother, children, brother, and sisters, and that most of his free time was spent with his family; that in his lifetime he had experienced serious problems getting along with his father, brother, sister, spouse, children, sexual partner. Also said that alcohol or drugs had negatively impacted his relationships with father, brother, sister, sexual partner, spouse, children. He said that during his lifetime he had been abused emotionally by his father and physically by his father, that he had no serious conflicts with family members in the last 30 days.

Id. at 7022. Petitioner also reported being the victim of sexual abuse. Id. at 7019-7020.

A recommendation was made that Petitioner attend a day treatment program; however, none were offered in Paulding County at the time. (T 26:7023). Because Petitioner said he needed to seek work, weekly substance abuse group attendance was recommended instead. Id. Petitioner was diagnosed with alcohol dependence. Id. Ms. Romanek testified that she scheduled a follow-up appointment with Petitioner, but Petitioner failed to return. Id. at 7019. Petitioner also failed to attend the recommended substance abuse groups. Id. at 7023.

Trial counsel then presented the testimony of Dr. Thomas Sachy, an expert in the field of neuropsychiatry, behavioral neurology, and the interpretation of MRI scans. (T 26:7028-7034). Dr. Sachy interviewed Petitioner in March 2009, and based upon abnormalities that appeared during his neuropsychiatric and physical exams of Petitioner, Dr. Sachy requested an MRI. Id. at 7033, 7052-7054. Dr. Sachy explained that an MRI, or magnetic resonance imaging, is "the best way to get a crystal clear view of the structure of a person's brain without actually ... going in there and looking physically." Id. at 7039.

Dr. Sachy testified that Petitioner's MRI scans showed part of Petitioner's cerebellum, the part of the brain that controls physical coordination, cognitive coordination, and flexibility in social situations, had shrunk. (T 26:7038-7039). Dr. Sachy explained that "this is typical of long term damage from alcohol or some other toxin." Id. at 7039. Dr. Sachy also noted that the MRI demonstrated mesial temporal sclerosis. Id. at 7040. Dr. Sachy explained:

> Mesial temporal sclerosis is damage to the temporal lobes, and it is connected with subtle impairments in memory, in behavior, in control of impulses. But most importantly with Mr. Ledford where these two bright areas are right there (indicating), that part of the temporal lobe, these two portions, are called the amygdala. And we have an amygdala on one side and an amygdala on the other. And what the amygdala does is it controls or is responsible for rage. It controls or is responsible for the production of anger and violence and the tagging of information with kind of violent negative information. That's what the amygdala does. And people who have damage to the amygdala can be sometimes prone to rages and have impaired control of rage reactions, etc. So he has mesial temporal sclerosis.

Id. at 7040-7041.

Petitioner's MRI also revealed scar tissue, or damaged neurons, in the front of Petitioner's brain. (T 26:7041-7042). Specifically, Petitioner had frontal horn capping, or leucoariosis, which damaged fibers that traverse from different parts of the brain, especially within the front of the brain, and "[w]hen those channels are damaged we have problems with cognition." Id. at 7043. Dr. Sachy noted that the front of the brain is the most important part of the brain, and is responsible for a person's personality, empathy, and humanity. Id.

Damage to the frontal horn, leucoariosis, impacts cognition, causes problems with judgment and morality, and causes one to behave poorly in highly charged conflict situations. (T 26:7044-7048). Petitioner's brain damage was close to the worst area possible, the right medial. Id. at 7046. Individuals with this type of brain damage find personal moral violations to be acceptable in dilemma situations. Id. "In other words, if you put these people in a high dilemma situation with this brain damage, they were more likely to do things that they would later think were amoral," because "[t]hey didn't realize they were being amoral until it was shown to them afterwards and they had calmed down." Id.

Dr. Sachy described Petitioner's brain functioning:

> Well, Mr. Ledford, just plainly speaking by his MRI, has several regions of brain damage that stand out crystal clear, and I'll be able to show it here shortly. They

> correspond to the areas where he showed deficit in his neuropsychiatric examination from me and his neuropsychological examination which I didn't do.
>
> But he has damage to the frontal portion of his brain, the part of the brain that controls our kind of moral decision making in high conflict, high emotion dilemma situations. He has damage in that area. He also has damage – and that area is in the front, behind a person's eyes, just above their nose.
>
> He has damage in his temporal lobes. At the side here are scarring (indicating), which I'll show, which if he had seizures it would clearly correspond. It would go hand-in-hand with that, but he doesn't have to have had seizures. Also, he shows signs of probable long term damage from alcohol intake.

(T 26:7036). When asked whether he had reached any diagnosis, Dr. Sachy replied:

> Mr. Ledford, obviously, has a diagnosis, but I can say he has a diagnosis of Leucoariosis; I can say he has a diagnosis of Mesial Temporal Sclerosis; I can say he has an impulse control disorder not otherwise specified in the old fashioned psychiatric way. We can say he has alcohol abuse, significant long history of; probably could say he has a history of alcohol-related brain damage. We know one thing important. At age nine he fell out of a tree and broke his arms, I think severely injured his shoulder, and was hospitalized. He fell from a great height, and he was hospitalized and treated with anti-seizure medications for uncontrollable urination and uncontrollable behavior. And, in fact, they had to consult the urologist to see if he was somehow torn up inside, where his bladder connects to his urethra and everything, to see if there was some physical damage because he had uncontrollable urination and he was speaking incoherently for several days. And they obviously felt that he needed anti-seizure medication to control him. And it's clear from the medical record that he obviously suffered some form of brain damage. And there's no way you fall from a tree and break your arms with that kind of force and impulse and not give your head a real good knocking.

Id. at 7050-7051.

Dr. Sachy summarized his conclusions for the jury: "[p]eople like Mr. Ledford in very unusual or unfortunate circumstances, if their brains aren't working right and there's something wrong they're more likely ... to do bad things compared to healthy people." (T 26:7054).

Furthermore:

> [T]hose who do these things tend to have evidence of psychiatric and neurological damage that is not responsible as much for the act but it's responsible for the inability to act properly.

> Again, these people, if you ask them what is right and wrong, they can tell you. Even the worst schizophrenic in the world knows murder is wrong. But, you know, when they do something wrong in a high conflict situation, they're not thinking and they're not timing it out. They're not appreciating consequences. They're working in milliseconds. Heart rate, adrenaline, everything is going, and they tend to make the wrong decisions in spite of intact moral knowledge in a non-conflict situation.

Id. at 7054.

Counsel next called Dr. David Gose, a medical doctor specializing in internal medicine at Wellstar East Paulding Primary Care in Paulding County. (T 26:7076-7077). Dr. Gose testified that on June 30, 2006, he saw Petitioner concerning a sore throat. Id. at 7077. Dr. Gose took Petitioner's history, in which Petitioner admitted having approximately nine alcoholic drinks a day. Id. at 7078. Dr. Gose treated Petitioner for thrush, instructed Petitioner to reduce drinking, offered him a prescription for a medicine to help him stop drinking, and discussed alcohol cessation with Petitioner. Id. at 7079-7080.

Additionally, Petitioner "had a positive Hepatitis C screening test on his blood, and he had a slight elevation of his liver tests." (T 26:7084). Dr. Gose recommended Petitioner return for a second blood test to confirm that he had hepatitis C as the test showed that he had been exposed to hepatitis C, but did not show whether he had an active infection. Id. Dr. Gose scheduled a follow up appointment with Petitioner, but Petitioner never returned. Id. at 7081. Dr. Gose told the jury that he believed Petitioner had a drinking problem. Id. at 7081-7082.

Trial counsel also presented the testimony of Dr. Larry Morris, an expert in the field of interpersonal violence and developmental psychology.[25] (T 27:7118-7130). Dr. Morris explained to the jury that he was not looking to excuse Petitioner's actions, but instead looked

[25] Dr. Morris authored books on child sexual abuse and child molestation. (T 27:7122).

for "an understanding of how a person gets from being born to where they end up in court before you." Id. at 7132. Dr. Morris instructed:

> [L]ook at this situation from a child's standpoint, not an adult's standpoint but a child's standpoint. What is a child going through as they're being raised; what happens to them; why do they end up feeling the way they do about themselves; why do they end up feeling the way they do about society; why do they end up feeling the way they do about anything.

Id.

Dr. Morris emphasized, Petitioner "is the sum total of all of his experiences up to date, especially those that occurred between birth and 12 years old." (T 27:7131). Dr. Morris believed that Petitioner's experiences growing up "made him into what I would consider a very frightened, anxious ten year old who acts more like a very angry twelve year old." Id. Dr. Morris based his conclusion on Petitioner's records he had reviewed, along with corroboration provided by Petitioner's family. Id. Petitioner's background "affects him in a way that is very negative, that there's a very negative self image of himself," and Dr. Morris emphasized that Petitioner acted out inappropriately over time. Id.

Dr. Morris discussed the difference between good parenting and primitive parenting, and explained how these concepts applied to Petitioner. Id. at 7132-7146. Although there are no perfect parents, "pretty good parenting usually does a pretty good job of teaching kids from birth," while primitive parents "are parents who may be trying to do something or may not be trying to do something, but their approach to parenting is so primitive that it has a different kind of effect on a child than pretty good parenting." Id. at 7132-7133. Parents who fit into the "pretty good parenting" category:

> [N]urture the child. They'd start out with love, first of all. There would be love, and it would be unconditional love. And then they would begin to try to show the child what the world is like. And they do what is called socialization. Socialization only means one thing is that we have a social culture and we want to

> transmit that to the child. So we try to teach that to the child through a lot of different ways. We tell them; we show them things; we model their behavior. We do a lot of things of that nature so that they learn what the rules are, and they learn how to interact appropriately.

(T 27:7133).

Children reared in a "pretty good parenting" home tend to do well as adults. Id. at 7134. However, primitive parenting practices are toxic for children. (T 27:7135). According to Dr. Morris, primitive parenting can escalate into strong and repeated physical abuse to the child and other family members. Id. at 7134-7135. Further, a child raised with primitive parenting practices is more likely to be a high risk adult. Id. at 7135-7136. Dr. Morris explained:

> [T]hey're at high risk to engage in all kinds of things that are not really good. But they're going to have emotional problems, and that means anxiety, depression, fear, things of this nature. And they'll end up having behavioral problems, and behavioral problems are acting out inappropriately not attending school, not doing things of that nature. They have relationship problems. If they don't have a model of what an appropriate relationship is they're going to have a very difficult time establishing one themselves. They're going to have poor self image. They're going to have a lot of things that are going to counter what the rules of the culture, the main culture are. They learned other ways of getting through life. They don't usually work very well, because they end up in a lot of criminal behavior, too. And sometimes the criminal behavior is pretty aggressive and pretty mean.

Id. at 7136.

> [W]hat we usually find out is that there's a lot of acting out in the ages of about ten to twelve or so. And then when the testosterone starts kicking in, then that acting out usually escalates. And if there's a lot of anger in the individual, it very often goes into violence. And if there's been a lot of violence in the family, in the primitive parenting family, then that's a model that they use to handle their anxiety, to handle their problems, is to act out in that way.
>
> So you see a lot of criminal behavior begin early on, and these are what we call high-risk juveniles with that kind of a background. And by about eleven or twelve or thirteen, they start escalating what they're doing. And then by the time they become an adult they're pretty well enmeshed into some pretty violent aggressive criminal kinds of activities.

(T 27:7143).

Dr. Morris believed Petitioner was raised in a primitive parenting culture that became "extremely abusive in a variety of ways." (T 27:7136). Petitioner's father, who lived with Petitioner until Petitioner was about seven, was alcoholic, severely abusive to their mother, and began to abuse the children. Id. at 7137. Dr. Morris testified about stories from the family in which Petitioner, his mother, and siblings would hide in a closet when his father came back from a "big drinking binge" in order to avoid beatings. Id. Dr. Morris testified that Petitioner's mother was much more loving than Petitioner's father, but had a number of children in a very short period of time and only had limited resources with which to take care of the children. Id.

Alcoholism in the family also led to primitive parenting within Petitioner's family culture. Id. at 7138-7139. There were alcoholics on both sides of the family and the family members "would engage in really heavy substance abuse and violent behavior among themselves and others" as well as criminal activity. Id. at 7138. According to Dr. Morris "[t]hat's the kind of modeling that primitive parenting provides that gives a negative message about society and teaches them to deal with their feelings in a much different way." Id. As an example, when Petitioner was in diapers he drank a glass of vodka while his family members watched and perhaps even encouraged him to drink. Id. After this incident, Petitioner "went into a coma, threw up, and had a lot of problems." Id. at 7138-7139.

When Petitioner fell from a tree, "he was already experiencing the negative effects of primitive parenting," and the tree fall had a layering effect. (T 27:7139-7140). Petitioner's possible brain injury on top of his primitive parenting upbringing did "not allow him then to really sort things out and make better decisions about what he's being shown within the family." Id.

During his interview with Petitioner, Petitioner disclosed to Dr. Morris that he had been sexually abused as a child. (T 27:7143-7144). Dr. Morris testified:

> And a lot of males will go for years and never, ever disclose that they were sexually abused, especially by another male, because that's so shaming that they don't want anybody to know it because it really looks bad for anybody to know that they've been sexually abused or had sex with another male. So they'll go for years. I've had a number of men in therapy who have gone for 20 years or more and never, ever disclosed that they were sexually abused by someone, particularly a male, because it's so shaming and so damning.

Id. at 7142. Petitioner's family members confirmed that Petitioner only told them about his childhood sexual abuse once he was an adult. Id. at 7143.

The sexual abuse within Petitioner's family was "another one of the piling on things," because Petitioner was already "down, beaten, abused," and "it's very difficult to overcome that." (T 27:7140, 7142). Dr. Morris theorized that this abuse contributed to Petitioner's issues:

> You have someone who is already struggling trying to find a positive self-identity, has a lot of anxiety, was already a bed wetter, had been a bed wetter for years, not doing very well, backing off from interpersonal relationships, not having any real friends, any real pals, only the brothers and the family. And then someone sexually abused that individual. They're already damaged to begin with. They're really on shaky ground to begin with. And remember, we're taking a look at this through the child's eyes. You know, you're not looking at it through the adult's eyes. It's the child who is having difficulty. And now somebody takes advantage, an adult takes advantage.
>
> And what that usually does is exacerbate everything else that has been happening before that. It makes the positive self image even worse. It raises the anxiety level. It creates all kinds of fear. And if it's a male who is sexually abused by another male, then we have a cultural kind of thing that happens because men are never supposed to have sex with men. That's not supposed to happen in this culture. So that's what the child thinks, so now they begin to wonder about their own sexuality; they begin to wonder, you know, "what's going on with me? What's wrong with me that this happened?" But that was a child and an adult. They don't see the differential between the adult power and the child power. Males typically don't. So they incorporate all this in a negative way.

Id. at 7140-7141.

Dr. Morris noted that not everyone brought up with primitive parenting would become a murderer, and that there are "super kids" who are more resilient than other children brought up in similar, negative circumstances. (T 27:7144-7145). He knew of no explanation why this occurred, but noted that the sooner a child receives therapy, the more effective. Id. at 7145-7146. He testified that "children who do not have the support of the family, support of therapy, and support of the community in general, they do much worse over a long period of time than children who get into the kinds of support system that they need." Id. at 7146. Dr. Morris noted that Petitioner never received any therapy or support as a child. Id.

Trial counsel also presented the testimony of Dr. Robert Shaffer, a clinical psychologist and expert in neuropsychological evaluations. (T 27:7166-7170). Dr. Shaffer administered a complete neuropsychological evaluation of Petitioner. Id. at 7171. He explained:

> Neuropsychological tests are a form of tests that have been developed for their sensitivity to various types of brain injury, and each test assesses a different kind of brain function, some of which are located in specific areas of the brain. They're different from IQ tests, and they measure different aspects.
>
> An individual can have a pretty good IQ and be fairly intelligent, have good reasoning and so on, but still have an impaired brain and function in ways that are revealed by this type of neuropsychological test. The tests have more to do with actions in real life situations where decisions are made and where choices occur rather than just matters of academic intelligence.

Id. at 7171.

The first test that Dr. Shaffer administered was the Halstead-Reitan Test Battery. (T 27:7172). The results of the Halstead-Reitan showed that Petitioner scored in the impaired range on the Iowa Gambling Task, Booklet Category Test, Cancellation Task, Speech Perception Tests, Dichotic Listening Tests, Boston Naming Test, Aphasia Screening Test, and the Seashore Rhythm Test. Id. at 7177-7180. Petitioner's scores on the Halstead-Reitan were indicative of brain impairment in Petitioner's frontal and temporal lobes. Id.

In Dr. Shaffer's opinion, Petitioner showed significant impairment in frontal lobe functioning, specifically "around the ventromedial portion of the prefrontal cortex." (T 27:7177-7178, 7180). This area of the frontal lobe "is very active in making moral judgments, the appreciation that if I do something there is going to be a horrible consequence." Id. at 7180. Dr. Shaffer told the jury that Petitioner had deficits in the frontal lobe that impaired his ability "to stop a course of action once it's in sequence and change to a safer or more appropriate course of action, the ability to inhibit one's plans and one's intentions once they're in process based on new information that comes in." Id. at 7181.

Petitioner also had speech and language difficulties which were indicative of temporal lobe deficiencies. (T 27:7181). Specifically, Dr. Shaffer believed Petitioner had moderate brain impairment in his left temporal lobe. Id. at 7184-7185. The temporal lobes have a variety of functions, including controlling "emotion centers that involve rage and sexuality." Id. at 7181. The temporal lobe is associated with certain kinds of psychopathology, and "sexual sadists tend to reveal difficulty with the temporal lobes." (T 27:7181). Temporal lobe impairment affects moral judgment and reasoning "so that somebody would not really have feelings about the consequences of what they were doing, the impact that it would have on someone else, the ability to empathize with another person and feel a concern about what would happen to that other person." Id. at 7182.

According to Dr. Shaffer, alcohol would exacerbate these problems:

> [F]rom two vantage points. One is that people that have brain injuries very often turn to alcohol to alleviate the anxiety and the stress that comes from making such poor decisions. Because when they're constantly discovering they're a screw-up, that creates a lot of anxiety. And they tend to withdraw from other people, but the alcohol takes the edge off of the anxiety. And then it masks the problem because everybody just assumes they're a drunk and misses the fact that they've got a damaged brain.

> The second difficulty with alcoholism is that the alcohol intoxication interacts with a damaged brain in a way that is explosive and unpredictable. A normal alcoholic with an intact brain might do some things that are stupid, but somebody with damage to these areas of the brain that's drinking heavily might do something that's lethal.

(T 27:7182-7183). Petitioner's test results indicated "that there's a lot of misfiring going on in the brain creating a lot of noise, you might say." Id. at 7183. He concluded that such deficits indicated Petitioner had suffered a head injury. Id. at 7183-7184.

Dr. Shaffer reviewed Dr. Sachy's report and found that his findings were consistent with those of Dr. Sachy. (T 27:7189). Dr. Shaffer stated "[i]t's the same brain location that I found through my psychological testing." Id. at 7189. Damage to this portion of the brain was associated with:

> [T]he kinds of behaviors we're talking about here that have to do with moral judgment, controlling impulses, and the ability to have a feeling of empathy for what might happen after one makes a certain action and the ability to interrupt that action and redirect in a more healthy direction.

Id.

Mr. Berry then asked Dr. Shaffer to define psychopathy for the jury. (T 27:7189). Dr. Shaffer stated "[p]sychopathy is a condition that's used to describe individuals who seem not to have any emotional reaction in response to other people." Id. Dr. Shaffer denied that psychopathy was a deliberate choice, and he believed that it was important to know why an individual became a psychopath. Id. at 7189-7190. Dr. Shaffer went on to explain, "[w]hen there's damage to that area of the brain, there tends to be an impulsive, explosive behavior that violates the rights of other people without seeming to have much regard for those people." Id. at 7190.

Dr. Shaffer also discussed the results of the two tests administered by the State mental health expert, Dr. Kevin Richards. (T 27:7190-7193). The Harris Psychopathy Scale

accumulates information about an individual's background, such as prior arrests, illegal behavior, and childhood conduct disorders. Id. at 7191. The test then "ties that together with known information about relationships as adults[,]" which Dr. Shaffer indicated would depend on what information could be gathered from a defendant or the family of a defendant. Id.

Dr. Shaffer described the Minnesota Multiphasic Personality Inventory (MMPI) as a self-report questionnaire which contained 566 questions. (T 27:7191-7192). In contrast to the Harris Psychopathy Scale, the MMPI did not rely on any gathering of background information from a defendant's family. Id. at 7192. However, the MMPI used "ten or eleven different scales" that demonstrated "different kinds of mental problems, mental disorders, and mental illness." Id.

Dr. Shaffer concluded that Petitioner demonstrated injuries to the portions of the brain "that have to do with appreciating the consequences of actions and areas that have to do with moral reasoning and the ability to interrupt a course of action once it's in process with new information and redirect one's behavior to a safer, more appropriate course." (T 27:7193).[26]

On cross-examination, Dr. Shaffer admitted that he had not read any of the circumstances surrounding the first rape with which Petitioner was convicted. (T 27:7200-7201). However, Dr. Shaffer stated that such information "goes to the classification that [he] talked about earlier, sexual sadism. A rape is involved with overpowering a person in order to obtain sexual gratification." Id. at 7201. As Dr. Shaffer told the jury, "that type of behavior is related to temporal lobe damage that's consistent with the findings from my neuropsychological testing with [Petitioner]." Id.

Confronted with answers Petitioner had provided in a 2002 prison observation questionnaire, including Petitioner's denial that he had any problems controlling his temper, (T

[26] On redirect, Mr. Berry asked whether Petitioner ever indicated that he wanted Dr. Shaffer to find that he suffered from a mental disorder. (T 27:7216). Dr. Shaffer answered, "No, to the contrary. He seemed to minimize any problems that he has." Id. at 7216-7217.

27:7201-7202), Dr. Shaffer replied that such behavior was "not surprising" because "brain injury patients often have very little insight into their condition, which means that they can't describe their problems or their abilities at all." Id. at 27:7202. Furthermore, "the way [Petitioner] would respond to those questions may be conditioned by the fact that he's sitting in a room with correctional officers, and the way he presents himself is extremely important in that environment in a strategic manner that he's got to make the response that's going to help him out and gain him the most security and the most advantage in that situation." Id. at 7203-7204.

Counsel called Petitioner's oldest son, Tony Ledford (hereinafter "Tony"), as their next mitigation witness. (T 27:7220-7222). Tony testified that he was married with two children. Id. at 7220-7221. Petitioner is his biological father, and Petitioner and Tony's mother divorced when Tony was around two years old. Id. at 7221. Tony lived "all over" growing up, moving back and forth between Michigan and Georgia. Id. at 7222. Tony identified a photograph of himself, his younger brother, and Petitioner standing outside a house when Tony was approximately four years old. Id. at 7222-7223. After his parents divorced, Tony saw his father several times and visited him while he was incarcerated. Id. at 7223-7224. Tony asked the jury to return a life sentence. Id. at 7225.

Trial counsel then presented Michael Campbell, (hereinafter "Michael"), Petitioner's son. Michael testified that Petitioner is his biological father. (T 27:7227). Michael testified that he had spoken on the phone with his father once or twice, visited his father while he was incarcerated, and that Petitioner sent him drawings and letters. Id. at 7227-7229. Michael described Petitioner as a talented artist and he asked the jury to return a life sentence. Id. at 7229-7230.[27]

[27] During habeas proceedings, Mr. West recalled, "[o]ne of his sons who testified, didn't want to testify and he didn't make a very good impression on the jury on the stand....we wanted him to testify just to ask the jury not to

The next witness trial counsel called was Mark Ledford, (hereinafter "Mark"), Petitioner's brother. Counsel introduced numerous pieces of art that Petitioner created while incarcerated and sent to his family members. (T 27:7231-7236). Mark testified that he and Petitioner "were the closest of the brothers." Id. at 7236. Petitioner lived with him and his wife during times when Petitioner was not incarcerated, and Mark explained that Petitioner "demanded supervision constantly." Id. at 7236-7237. Petitioner was an unhappy and tormented person who did not have many friends and expressed feelings of being unable to fit in. Id. at 7237. Mark testified that Petitioner felt that "everything he touched he screwed up." Id. Once, Mark bought a new chainsaw which Petitioner took apart because he couldn't get it started, and "[t]hat was the case with anything." Id. at 7238. Mark testified that both sides of his family had issues with alcohol. Id. Mark asked the jury to spare Petitioner's life, noting "I want to say good things about Mike, but it's hard. He's had a terrible life. I hate to see him go out this way." Id.

Petitioner's mother, Shirley Mihalek, was counsel's final witness. Ms. Mihalek testified that she met Petitioner's biological father when she was sixteen years old, noting that her father did not like him because he was "a drunk." (T 27:7240). She testified that she became pregnant with Donald a year and a half into the relationship. Id. at 7240-7241. After Donald, Ms. Mihalek gave birth to a child every year for six years. Id. at 7241. She testified that Petitioner's father, Bill Ledford, Sr., was "very abusive when he was drinking, which was most of the time," and that he beat her "[m]any, many times." Id. at 7241. She explained that there were many instances in which she and the children would hide in a large walk-in closet from Bill Ledford, Sr., until he "would pass out." Id. at 7241.

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kill their dad. We called him in the penalty phase. He testified, but you could tell he didn't really give a shit about his dad. I'm sure the jury picked up on that too." (HT 12:2961).

There were times when she had to place her children in foster care "because [she] would have no house or food for them, and [she] would make sure they were taken care of." Id. at 7242. Ms. Mihalek finally divorced Bill Ledford, Sr., after he tried to beat up Donald. Id. at 7241. After they divorced, Ms. Mihalek was hospitalized "because [she] took some pills." Id. at 7242. Ms. Mihalek testified that it was hard to remember a lot of the family history because she had suffered "quite a few strokes" which affected her memory. Id. at 7243.

She recalled that Petitioner fell from a tree at age nine and was hurt badly. (T 27:7243-7244). Petitioner wore a cast that covered his upper body and the family "had to get a hospital bed for him because [they] had an upstairs bedroom and he couldn't manage." Id. at 7244. After Petitioner's fall, he suffered kidney damage and severe headaches. Id. Ms. Mihalek testified that all of her sons had drinking problems and that Petitioner did not have many friends growing up. Id. at 7242, 7244. Ms. Mihalek asked the jury to spare Petitioner's life, stating "I cannot change what happened, none of us can, but I don't believe that killing Mike is going to change it either. He deserves to live if that's what he wants to do." Id. at 7250.

State's Mental Health Expert Testimony In Rebuttal

In rebuttal, the State called Dr. Kevin Richards, Ph.D., (T 27:7252-7353), and Dr. David Walker, M.D., (T 27:7354-7414). Dr. Richards, a forensic psychologist, testified about his forensic evaluation of Petitioner. Id. at 7252, 7261. Dr. Richards met with Petitioner for approximately four hours at the Paulding County Detention Center. Id. at 7262. Dr. Richards conducted his evaluation of Petitioner with Dr. Walker, who is a forensic psychiatrist and a medical doctor. Id. at 7263. Dr. Richards listed the records that he had reviewed, including the reports of defense mental health experts Drs. Sachy, Morton, Morris, and Shaffer. Id. at 7264-7267.

In the course of his evaluation, Dr. Richards interviewed Petitioner and administered two tests: the Minnesota Multiphasic Personality Inventory (MMPI-2) and a Psychopathy Checklist. (T 27:7267-7277). Petitioner told Dr. Richards that at the time of the crime, Petitioner:

> [R]emembered around that period of time being upset. He had had to move back in with his mom because his brother and sister-in-law were having some marital problems. He didn't really want to be living there, so he was not happy about that. He was drinking quite a bit around the time and told us that he had been trying to get fired from his job so that he could get on unemployment and stay home and drink instead of having to pretend he was going to work and getting beer and going out and drinking in the woods.

Id. at 7269. Petitioner stated that on the day of the murder, he drank three beers on the trail, and then went to a gas station and bought two more beers, and returned to the trail and drank those beers as well. Id. at 7270-7271. Petitioner claimed that he did not remember much that happened afterwards. Id. at 7271. Dr. Richards testified that Petitioner explained to him during the evaluation:

> "You know, I don't plan to do any of these things....You know, sometimes I'll just be standing at a convenience store buying a beer, and all of a sudden I'll have a gun in my hand and I'll be robbing the place. And I won't even know what happened."

Id. at 7283.

Dr. Richards reached four diagnoses for Petitioner: alcohol dependence, (T 27:7290), cannabis abuse, (T 27:7295), psychopathy, (T 27:7296), and antisocial personality disorder. (T 27:7303). Dr. Richards explained that psychopathy is a personality disorder:

> [M]arked primarily by people who are not particularly concerned with society, societal rules, societal norms, the rights and feelings of others. Their behavior is primarily driven in the interest of meeting their own needs or satisfying their own desires. And the thing that you notice if you look at the course of the lifetime of an individual who has this particular personality organization, you'll find lots of examples of times when they did things because they wanted something or wanted to do something and they were willing to violate a societal norm, a law, or the rights and feelings of another person without any particular regard for the

> impact that behavior might have on them. So these folks are sort of callous. They lack empathy.

(T 27:7284). Regarding his diagnosis of antisocial personality disorder, Dr. Richards stated: "[i]t's similar to psychopathy in a way....But it's different in that it focuses mostly on the behaviors. It focuses primarily on a pattern of behavior that violates social norms, a pattern of behavior that shows irresponsibility or disregard." Id. at 7306. Dr. Richards also explained "pretty much everybody, that meets criteria for psychopathy will meet criteria for antisocial personality disorder. But only a subset of people that meet criteria for antisocial personality disorder would also meet the diagnostic criteria for psychopathy." Id. at 7306-7607.

The State then called Dr. David Walker, M.D, in rebuttal. (T 27:7354-7414). Dr. Walker spent three hours and forty minutes interviewing Petitioner in the Paulding County Detention Center. (T 27:7363). Dr. Walker reviewed numerous records, including Petitioner's MRI. Id. Dr. Walker diagnosed Petitioner with alcohol dependence, cannabis abuse, antisocial personality disorder, and hepatitis C. (T 27:7364). Dr. Walker did not see the white matter lesions that Dr. Sachy identified in Petitioner's MRI, and although he did notice some atrophy in Petitioner's brain, he did not find that this shrinkage was clinically significant.[28] (T 27:7370-7373).

Closing Argument

During closing argument, Mr. West acknowledged that the jury had found to its satisfaction that the State proved its case beyond a reasonable doubt at the guilt phase. (T 29:7510). Mr. West again told the jury:

> You have not heard us present any evidence that excuses or says that Michael is not guilty of these offenses. You have not heard one bit of evidence from the defense that says he's not guilty because he's crazy, that he's not guilty because of any mental aberration. What you have heard is that there is evidence that he has brain damage that he did not choose. You have heard that he's got evidence of a

[28] On redirect, Dr. Walker repeated that he had seen no evidence of a brain injury that would have caused Petitioner to commit the crime. (T 27:7413).

> horrific upbringing that even the State's psychiatrist, Dr. Walker, described as having lived in abject poverty during his youth.

(T 29:7511). Mr. West then summarized the testimony of Drs. Morris, Sachy, Morton, and Shaffer. (T 29:7511-7521). Mr. West discounted Dr. Walker's diagnosis of psychopathy, which he indicated "isn't even any such thing in the DSM-IV that is the leading authority in these areas. So I think we can kind of discount what Dr. Richards said because he's not basing it on a recognized source." (T 29:7521-7522). Mr. West argued that Petitioner's antisocial personality disorder was the result, and not the cause, of his troubled history and brain damage. (T 29:7511-7512). Finally, Mr. West argued that Petitioner's family should not be punished by a death sentence, especially because they had acted correctly in turning in Petitioner after he committed the crime. (T 29:7528-7529).

A. No Deficiency

This Court finds that trial counsel's presentation of evidence in mitigation was reasonable, particularly in light of counsel's thorough investigation of Petitioner's background, including his mental health, sexual abuse, and substance abuse. Based on that investigation, counsel made reasonable strategic choices. "It is well established that the decision as to which defense witnesses to call is a matter of trial strategy and tactics. (citation omitted.)" Humphrey v. Nance, 293 Ga. 189, 220 (2013) (quoting Hubbard v. State, 285 Ga. 791, 794 (2009)). Furthermore, "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Strickland v. Washington, 466 U.S. 668, 690.

Petitioner alleges trial counsel were ineffective for eliciting testimony that Petitioner was antisocial and a psychopath; and, for failing to procure funds for a prison adaptation expert.[29] In

[29] In his amended petition, Petitioner claims that counsel unreasonably failed to retain a prison adaptation expert to testify at the penalty phase. (Amended Petition at 8, Claim I(o)). However, in his post-hearing brief, Petitioner claims that counsel was ineffective for not procuring funds for a prison adaptation expert. (PHB 51-60).

support of his claims, Petitioner submitted six affidavits of family members and friends, four expert reports, seventy records documenting the history of Petitioner and Petitioner's family, the reports of the four mental health experts who testified for Petitioner at Petitioner's trial, and Ms. Michaels' genogram. (PX 1-76). At the state habeas hearing, Petitioner called one witness to testify, social worker Mary McLaughlin. (HT 1:25-119).

i. Testimony Regarding Antisocial and Psychopathy

Petitioner claims that trial counsel's strategic decision to elicit testimony that Petitioner was antisocial and a psychopath was not reasonable because it "effectively provided evidence in aggravation rather than mitigation." (PHB 1). Petitioner argues that trial counsel should have presented the testimony of a forensic social worker, such as Mary McLaughlin, instead to prevent the testimony that Petitioner is antisocial and/or a psychopath from being introduced. At the evidentiary hearing, Petitioner presented Ms. McLaughlin, who testified that she completed an assessment of Petitioner during habeas proceedings. (HT 1:37-38). Ms. McLaughlin reviewed numerous documents including affidavits of Petitioner's family members and friends; portions of the trial transcript; and medical, school, employment, mental health, and law enforcement records.[30] (HT 1:38-39; PX 9, HT 3:318). Additionally, she interviewed Petitioner, his mother, and his siblings, Sherri, Billy, Mark, and Daniel. (HT 1:38-39; PX 9, HT 3:318; RX 16, HT 12:3106).

Ms. McLaughlin discussed the living conditions of Petitioner's family including how they moved often, lived in poverty, and lived with their extended family at times. (HT 1:40-43). She testified that Petitioner's father was an abusive alcoholic, that the children were afraid of

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[30] The Court notes that the records admitted into evidence by Petitioner at the habeas hearing, which Ms. McLaughlin indicated that she relied upon, contain prison records suggesting that Petitioner suffered from antisocial personality disorder. (PX 25, HT 3:573, 588).

him, and that they recalled hiding in the closet when he came home. (HT 1:40, 44). Ms. McLaughlin discussed sexual abuse within the Ledford family including Petitioner's sister, Sherri, who was sexually abused by her uncle; Petitioner's brother, Daniel, who was sexually abused from age eight to twelve by a cousin and by his sister, Sherri; and, Petitioner, who was molested by his mother's boyfriend. (HT 1:46-47, 49-52, 90). Additionally, Ms. McLaughlin testified regarding Petitioner's history with substance abuse, how the Ledford brothers began drinking together, and their criminal behavior. (HT 1:55-60). Ms. McLaughlin also explained the impact of poor parenting. (HT 1:60-69). This Court finds that the majority of Ms. McLaughlin's testimony is cumulative of the testimony presented at Petitioner's trial.[31]

Furthermore, trial counsel's decision to elicit testimony from Petitioner's mental health experts that Petitioner was antisocial and a psychopath *before* the State's mental health experts presented those same conclusions to the jury during their rebuttal testimony, was reasonable. (T 27:7189). Although Mr. Berry could not specifically recall why he questioned Dr. Shaffer about psychopathy, he stated "I'm sure there was a reason at that particular point in time, but maybe because of the fact that the State was going to argue that, so we wanted to try to get that out...and let the doctor explain that's not something that you wake up and decide you want to be." (HT 2:247-248). This demonstrates counsel's reasonable decision to "preempt any effort by the prosecution to prove the same thing." Morton v. Sec'y, Fla. Dep't of Corr., 684 F.3d 1157, 1169 (11th Cir. 2012) (citing Awkal v. Mitchell, 613 F.3d 629, 642 (6th Cir. 2010) (en banc)). This is "the sort of calculated risk that lies at the heart of an advocate's discretion." Yarborough v. Gentry, 540 U.S. 1, 9 (2003).

[31] Regarding the portion of Ms. McLaughlin's testimony which was not cumulative of the evidence presented at Petitioner's trial, as explained below, Petitioner has failed to show prejudice.

Moreover, a capital defense attorney does not render ineffective assistance of counsel "as a matter of law when he introduces evidence of antisocial personality disorder for mitigation purposes." Morton v. Sec'y, Fla. Dep't of Corr., 684 F.3d 1157, 1168 (11th Cir. 2012). As the Supreme Court of the United States has explained "the Eighth and Fourteenth Amendments require that the sentencer ... not be precluded from considering, *as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." Eddings v. Oklahoma, 455 U.S. 104, 110 (1982) (quoting Lockett v. Ohio, 438 U.S. 586, 604 (1978)) (alteration and emphasis in original) (internal quotation marks omitted). "That a diagnosis of antisocial personality disorder has negative characteristics or presents a double-edged sword renders it uniquely a matter of trial strategy that a defense lawyer may, or may not, decide to present as mitigating evidence." Morton v. Sec'y, Fla. Dep't of Corr., 684 F.3d 1157, 1168 (11th Cir. 2012).

Petitioner alleges trial counsel never considered not presenting mental health testimony. However, Mr. West indicated that counsel had considered the possibility that they would not present mental health expert testimony at sentencing:

> [I]f Sachy came back and said, well hey, there's no, I don't see any brain damage, if Shaffer came back and said the guy's as normal as, sound as a bell, we wouldn't have used the experts and we would have come up with a different theory to explain his aberrant behavior.

(HT 1:166). Counsel knew that the State would present highly aggravating evidence of the victim's murder to the jury. Counsel was also aware that despite attempts to limit the introduction of similar transactions, the jury would learn about Petitioner's numerous attacks against women, in some instances through the testimony of the victims themselves. (HT 1:148). Additionally, despite vigorously challenging the introduction of Petitioner's recorded telephone calls from the prison, the trial court ruled during the State's presentation of aggravation at

sentencing that the tapes would be admitted and played to the jury. In light of this aggravating evidence, counsel chose to present expert mental health witnesses to support counsel's argument that Petitioner's behavior was so uncontrollable that it must be involuntary and the result of brain damage, and attempt to counter the State's experts' testimony by presenting the worst of the diagnoses themselves.

Counsel's investigation had revealed a wealth of mitigating evidence. Mr. West instructed the defense team to focus on documents and witnesses that would explain Petitioner's mental, alcohol, and sexual issues. (RX 134, HT 71:18238). However, in addition to the lay witness and fact witness testimony about Petitioner's social history and his history of physical, emotional, sexual, and substance abuse, counsel could have reasonably decided that the additional presentation of expert mental health evidence provided their client's best chance to avoid a death sentence. Different lawyers will evaluate these risks differently as "[e]ven the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689.

The Georgia Supreme Court has held that:

> [E]ven if a defendant can distinguish between right and wrong, expert mental health testimony and evidence regarding the effects of a history of substance abuse, as well as severe abuse at the time of the crimes, "is critical at the penalty phase of a capital case 'because in our system of criminal justice acts committed by a morally mature person with full appreciation of all their ramifications and eventualities are considered more culpable than those committed by a person without that appreciation.' [Cit.]"

Hall v. McPherson, 284 Ga. 219, 229-230 (2008) (quoting Bright v. State, 265 Ga. 265, 275 (1995)). In Bright, the Georgia Supreme Court noted:

> Finally, although at sentencing Bright did rely on his own testimony from the guilt-innocence phase of the trial regarding his intoxicated condition on the evening of the murders, and although he possibly could have offered other non-expert evidence regarding his history of drug abuse, his intoxication on the

> evening of the crimes, his emotional troubles, and his troubled youth, Bright's testimony, as would have any other non-expert evidence he could have offered, only inartfully covered the issues in question and did not provide Bright with the meaningful scientific and psychiatric evidence that a defendant with money could have offered in his defense.

Bright, 265 Ga. at 276-277).Counsel representing defendants convicted of capital murder, like counsel here, face difficult sentencing decisions. Here, trial counsel's strategy was to "explain how someone could do what [Petitioner] did[,]" which they thought could best be done through expert mental health testimony. (HT 1:152). Unfortunately, as is often the case with individuals who have committed crimes like those of Petitioner, this mental health evidence will almost certainly have aggravating components. However, counsel considered their options and felt that the testimony of mental health experts could be more mitigating than aggravating.

When the record is viewed as a whole, trial counsel's decision to present expert mental health testimony, including evidence of antisocial personality disorder and psychopathy, was reasonable, and Petitioner has not demonstrated any deficient performance.

ii. Prison Adaptability Expert

Petitioner also claims that counsel unreasonably failed to retain a prison adaptability expert for the sentencing phase of his trial.[32] In his brief, Petitioner acknowledges that trial counsel's file indicates there was discussion about hiring "an expert witness who could opine that [Petitioner] would not pose a future danger while serving the remainder of his life in prison." (PHB 52). However, Petitioner argues counsel had "no reasonable strategic reason" for not hiring a prison adaptation expert.

[32] In his amended petition, Petitioner claims that counsel unreasonably failed to retain a prison adaptation expert to testify at the penalty phase. (Amended Petition at 8, Claim I(o)). However, in his post-hearing brief, Petitioner claims that counsel was ineffective for not procuring funds for a prison adaptation expert. (PHB 51-60). As explained below, this Court finds that both variants of Petitioner's claim are without merit.

As Mr. Berry testified during habeas proceedings, counsel considered the use of a prison adaptability expert at Petitioner's trial; however, they decided against it because Mr. Berry had a bad experience with this type of expert in a prior case. (HT 2:252). Specifically, Mr. Berry testified:

> I think that was more me talking Tom into not doing it. And the reason is, I had been bitten in the Humphreys case. I got talked into putting that expert on, and it turned out to be the turning point in the case. And this is my personal belief: I think a jury does not want to hear that a person is going to enjoy jail and that they're going to fit in just fine. I think a juror, if they're going to give a person a life without parole or a life sentence, they don't want to think the person is going to enjoy themselves and that they're going to have a good time there. I think a juror wants to know they're looking behind their back every minute, it's not going to be a nice place and they're not going to have fun there. So, adaptability in prison is not something that I think is worthwhile at all. I think it undermines, really what you need to do in mitigation. I think that you need to cover with a jury the fact that this person is not going to be able to commit crimes in the prison system because they're locked away, they're shackled, they're handcuffed everywhere they go. They're not going to have the ability to be able to commit another crime. So, their inability to do that is much better to talk about than their adaptability, and that was the reason that I felt like it would not be – and, you know, we talked to Michael. This was going to be a hard sell. This was a difficult case just because of the circumstances. So, I just didn't think it was going to help us at all.

(HT 2:252-253). Mr. West recalled a similar strategic reason for counsel's decision not to present Mr. Aiken:

> We'd always ask for James [Aiken], and typically it would be denied, or in this case it was. We had a budget crunch. We had to pare our budget and I think we pared everyone that wasn't primarily a mental health type person.

(HT 1:174).

Mr. West's testimony also demonstrates that counsel procured funds for expert witnesses to present at sentencing, but given the limitations to the defense team's funding, counsel decided not to present a prison adaptability expert in favor of using their limited resources for mental health experts. Consequently, the Court finds that Petitioner has not demonstrated that counsel's

performance was deficient with regard to their request for funds for a prison adaptability expert, or as to their ultimate decision not to present such an expert.

B. No Prejudice

As discussed above, this Court finds that trial counsel's presentation of evidence in mitigation, including mental health evidence, was reasonable. Furthermore, even if this Court were to find trial counsel's performance deficient, which it does not, Petitioner's claim still fails as he has not shown resulting prejudice.

A comparison of the trial record and the habeas record shows the majority of the evidence presented in habeas was cumulative of the evidence presented at Petitioner's trial. Petitioner argues that this cumulative evidence, the evidence regarding Petitioner's childhood, poverty, familial incest and molestation, alcohol abuse, physical abuse, parental neglect and poor parenting, multigenerational mental illness, residential instability, social isolation, lack of protective factors, school history, and work history, would have resulted in a reasonable probability of a different sentence had counsel presented this evidence at sentencing *without* the testimony regarding Petitioner's diagnoses of antisocial personality disorder and psychopathy. (PHB at 48-49). However, this conclusion ignores the fact that removal of this evidence would have removed the majority of Petitioner's mitigating mental health evidence. Had counsel foregone the expert testimony of Petitioner's mental health issues as Petitioner suggests, the jury would not have heard any plausible explanation for Petitioner's crimes, or for his deviant behavior while awaiting trial in the correctional center. Without Dr. Morton's testimony about Petitioner's alcohol abuse, Dr. Morris's testimony about Petitioner's sexual abuse, and the testimony of Drs. Sachy and Shaffer about Petitioner's brain damage, the jury would have been left even more puzzled.

Furthermore, the presentation of an expert like Ms. McLaughlin and the affidavits tendered at habeas held their own risks. The focus on the sexual molestation by the various family members would likely have undercut the mitigating value of the testimony of Petitioner's sister, Sherri Byess, had the jury heard that Petitioner's brother, William Ledford ("Billy"), claimed that she had molested him as a child. (PX 4, HT 3:291). Billy's medical records, entered by Petitioner at the habeas hearing and relied upon by his habeas expert, indicate that Billy reported as early as 2001 that he had been molested by his sister. (PX 33, HT 4:664).

Likewise, additional testimony from Daniel Ledford regarding alleged sexual misconduct between Petitioner and his brother would have been a "double-edge sword." Courts have "consistently 'rejected the prejudice argument where mitigation evidence was a two-edged sword or would have opened the door to damaging evidence.' Cummings v. Sec'y for the Dep't of Corr., 588 F.3d 1331, 1367 (11th Cir. 2009) (internal quotations marks omitted)." Ponticelli v. Sec'y, Fla. Dep't of Corr., 690 F.3d 1271, 1296 (11th Cir. 2012). The evidence that Petitioner allegedly molested his brother Daniel is a double-edge sword because, as noted by Mr. Berry, it could have been used by the State as another similar transaction. (RX 14, HT 12:3059).

Additionally, the Court notes that the information Petitioner claims that counsel was ineffective for presenting to the jury, that Petitioner suffered from antisocial personality disorder, is mentioned in the documents that his habeas expert, social worker Ms. McLaughlin, relied upon and which he entered as exhibits during the habeas hearing. (PX 25, HT 3:573, 588). "[Petitioner] has failed to show how this witness' testimony would have changed the outcome of the trial when the same evidence [he] contends [the witness] would have testified to was admitted through other witnesses." Gibson v. State, 290 Ga. 6, 12 (2011).

The Court finds that both variants of Petitioner's claim, that he suffered prejudice because of counsel's failure to present a social worker such as Ms. McLaughlin to testify at sentencing in order to avoid the jury's exposure to potentially negative mental health testimony, and his claim that he suffered prejudice from the slight differences between the mitigation testimony presented at trial and at the habeas hearing, are without merit.

Regarding the report of James Aiken, testimony from "future dangerousness experts" has previously been found unpersuasive. See Johnson v. Upton, 615 F.3d 1318, 1343 (11th Cir. 2010). Further, the opinions stated in Mr. Aiken's affidavit are contradicted by Petitioner's classification report, dated August 28, 1992, contained within the prison records submitted by Petitioner at the habeas hearing. (PX 25, HT 3:570-571). The report states:

> OPR listed inmate's violence potential as very high. I feel that the inmate has a potential to assault female correctional officers. Inmate does have a past record of sexually assaulting females and I feel he will have a tendency to assault female correctional officers even while incarcerated. I feel that inmate gets some kind of high or thrill by sexually assaulting female victims.

(PX 25, HT 3:570). Additionally, the report recommended that Petitioner "be employed away from female correctional officers or any type of female staff." Id. The Georgia Supreme Court noted the specific evidence that forecloses relief based on Petitioner's current claim:

> Contrary to Ledford's contention, the prosecutor's argument that Ledford might present a future danger to others was based on specific evidence supporting that argument, including evidence that Ledford had sexually harassed a pregnant jail guard and had made sexual remarks to a 14-year-old girl over the telephone from the jail. Compare Henry v. State, 278 Ga. 617, 619 (1) (604 SE2d 826) (2004) ("An argument that a death sentence is necessary to prevent future dangerous behavior by the defendant in prison must be based on evidence suggesting that the defendant will be dangerous in prison.").

Ledford, 289 Ga. at 87.

The United States Supreme Court has held that, with regard to death sentences, "the question is whether there is a reasonable probability that, absent the errors, the sentencer...would

have concluded that the balance of the aggravating and the mitigating circumstances did not warrant death." Strickland, 466 U.S. 668, 695. Petitioner argues the non-mental health mitigating evidence would have resulted in a reasonable probability of a different sentence had counsel presented this evidence at sentencing through a non-mental health expert, without the mental health evidence. (PHB 19). This Court does not agree. Regarding the aggravating circumstances, the Georgia Supreme Court found:

> [T]he separate aggravated battery verdicts are supported by the evidence that the victim's death was not instantaneous...Likewise, the jury's finding of torture was supported by the evidence that the victim's death was not instantaneous, but was preceded by serious sexual abuse, as well as the serious physical abuse which constituted the aggravated batteries...Furthermore, the shocking and vicious nature of the victim's murder by stomping and kicking authorized the jury to find that the murder was outrageously or wantonly vile, horrible, or inhuman.

Ledford, 289 Ga. 70, 89-90.

Weighing the mitigating evidence presented during habeas proceedings[33] against the aggravating circumstances, including Petitioner's "long history of criminal acts against numerous women, including a rape, several apparent attempted rapes, and sexually-deviant behavior directed at women and his own 14-year-old relative,"[34] this Court finds that Petitioner has not met his burden of demonstrating a reasonable probability of a different outcome. Accordingly, Petitioner's claims of ineffective assistance of counsel are DENIED.

2. SENTENCING PHASE INSTRUCTIONS

In **Claim XIII**, Petitioner argues that the trial court's sentencing phase instructions were ambiguous, misleading, insufficient, vague, confusing, and contrary to law and fact.

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[33] The evidence regarding Petitioner's childhood, poverty, familial incest and molestation, alcohol abuse, physical abuse, parental neglect and poor parenting, multigenerational mental illness, residential instability, social isolation, lack of protective factors, school history, and work history.

[34] Ledford, 289 Ga. 70, 90.

Additionally, in **Claim XIV**, Petitioner claims that the trial court failed to instruct the jurors that unanimity was not required to impose a life sentence.

Claims of error in the sentencing phase jury charges in a death penalty case are not subject to procedural default. Head v. Ferrell, 274 Ga. 399, 403 (2001); Tucker v. Kemp, 256 Ga. 571, 573-574 (1987). Accordingly, this claim is properly before the Court for a review on the merits. However, Petitioner did not brief this claim or present evidence to support it. A review of the sentencing phase instructions in their entirety reveals no merit in Petitioner's contentions regarding those charges. Accordingly, this claim is DENIED.

3. ALLEGED JUROR MISCONDUCT

Petitioner requests that this Court reconsider its March 11, 2014 order granting Respondent's motion to quash Petitioner's subpoenas sent to the jurors from his trial. Petitioner repeats his two previous arguments, that he was denied a fair trial and reliable sentencing proceeding because of alleged juror misconduct. (PHB at 80-84). After reviewing the facts and the law this Court declines to reconsider its earlier ruling.

O.C.G.A. § 24-6-606(b) (effective January 1, 2013), provides that:

> Upon an inquiry into the validity of a verdict or indictment, a juror shall not testify by affidavit or otherwise nor shall a juror's statements be received in evidence as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the jury deliberations or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith; provided, however, that a juror may testify on the question of whether extraneous prejudicial information was improperly brought to the juror's attention, whether any outside influence was improperly brought to bear upon any juror, or whether there was a mistake in entering the verdict onto the verdict form.

O.C.G.A. § 24-6-606 (effective January 1, 2013).[35]

[35] Formerly, O.C.G.A. §§ 9-10-9 and 17-9-41 provided that the affidavits of jurors may be taken to sustain but not to impeach their verdict.

This statutory prohibition is deeply rooted in Georgia law and serves important public policy considerations. See, e.g., Oliver v. State, 265 Ga. 653, 654(3) (1995); Reece v. State, 208 Ga. 690, 691 (1952) (holding that "[i]t is well settled, as a matter of public policy, that a juror will not be heard to impeach his verdict by showing his own incompetency or disqualification"); Bowden v. State, 126 Ga. 578 (1906) (holding "[a]s a matter of public policy, a juror can not (sic) be heard to impeach his verdict, either by way of disclosing the incompetency or misconduct of his fellow- jurors, or by showing his own misconduct or disqualification from any cause"). Moreover, the Supreme Court of Georgia has explicitly applied this statutory prohibition against juror impeachment of the verdict to death penalty cases. See, e.g., Spencer v. State, 260 Ga. 640, 643(3) (1990); Hall v. State, 259 Ga. 412, 414(3) (1989).

Like the Georgia state courts, "for nearly a century, the Supreme Court has recognized a near-universal and firmly established common-law rule *flatly prohibiting* the use of juror testimony to impeach a verdict." United States v. Siegelman, 640 F.3d 1159, 1185 (11th Cir. 2011) (citing Tanner v. United States, 483 U.S. 107, 117 (1987); McDonald v. Pless, 238 U.S. 264 (1915) (emphasis in original)); see also Crawford v. Head, 311 F.3d 1288, 1331-334 (11th Cir. 2002) (juror affidavits containing evidence of juror misconduct were inadmissible because the affidavits did not contain evidence of "external influences"). The Court further explained the "important policy considerations" behind this rule such as harassment of jurors by the defeated party which directly hampers "freedom of discussion" during deliberations and creates "endless attack[s]" on the verdict. United States v. Siegelman, 640 F.3d at 1185-186.

Petitioner has not provided any valid basis for the Court to reconsider these previous rulings regarding Petitioner's claims of juror misconduct, much less any grounds that require the Court to vacate its order and "re-open the evidence to allow testimony from the jurors"

surrounding the alleged misconduct as requested by Petitioner. (PHB at 84). For the reasons set forth in the Court's order filed on March 13, 2014, the Court granted Respondent's Motion to Quash Juror Subpoenas and Motion in Limine to Preclude Evidence Impeaching Jury Verdict. As Petitioner has not presented any proper evidence of juror misconduct Petitioner's claim is therefore DENIED.

VI. CONCLUSION

After considering all of Petitioner's allegations made in the habeas corpus petition, the evidence presented at the habeas corpus hearing, and the argument presented to this Court in Petitioner's post-hearing brief, this Court concludes that Petitioner has failed to carry his burden of proof in demonstrating any denial of his constitutional rights as set forth above.

WHEREFORE, it is hereby ORDERED that the petition for a writ of habeas corpus is denied and that Petitioner be remanded to the custody of Respondent for the execution of his lawful sentence.

The Clerk is directed to mail a copy of this Order to counsel for the parties.

SO ORDERED, this 23rd day of August, 2016.

HONORABLE CHRISTOPHER S. BRASHER
Sitting by Designation in
Butts County Superior Court