APPENDIX

TABLE OF CONTENTS

Page

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-3

MIKAL D. MAHDI,

Petitioner - Appellant,

v.

BRYAN STIRLING, Commissioner, South Carolina Department of Corrections; MICHAEL STEPHAN, Warden of Broad River Correctional Institution,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Timothy M. Cain, District Judge. (8:16-cv-03911-TMC)

Argued: March 9, 2021 Decided: December 20, 2021

Before GREGORY, Chief Judge, AGEE, and RICHARDSON, Circuit Judges.

Affirmed by published opinion. Judge Agee wrote the opinion, in which Judge Richardson joined. Chief Judge Gregory wrote a dissenting opinion.

ARGUED: Ernest Charles Grose, Jr., GROSE LAW FIRM, LLC, Greenwood, South Carolina, for Appellant. Melody Jane Brown, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees. **ON BRIEF:** Thania Charmani, New York, New York, for Appellant. Alan Wilson, Attorney General, Donald J. Zelenka, Deputy Attorney General, J. Anthony Mabry, Senior Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees.

AGEE, Circuit Judge:

In this death penalty case, Mikal Mahdi ("Mahdi") appeals from the district court's denial of his 28 U.S.C. § 2254 petition for habeas relief and his accompanying request for supplemental expert funding. We granted a Certificate of Appealability ("COA") on five issues. *See* 28 U.S.C. § 2253. For the following reasons, we affirm the district court's judgment in its entirety.

I.

As a federal court reviewing a state court's decision under § 2254, we do so through a narrow lens, "carefully consider[ing] all the reasons and evidence supporting [it]." *Mays v. Hines*, 141 S. Ct. 1145, 1149 (2021) (per curiam). We must examine the record in its entirety as it existed before the state post-conviction relief ("PCR") court at the time of its decision. *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011). Only upon a full review of the record may we consider whether that court's judgment was the result of "an error that lies beyond any possibility for fairminded disagreement." *Mays*, 141 S. Ct. at 1146.[1]

Unsurprisingly, this case has an extensive procedural history. We begin by recounting Mahdi's conduct that gave rise to his convictions and provide an overview of the plea and sentencing hearings in the South Carolina state trial court (the "trial court"). We then turn to Mahdi's first PCR proceeding in state court—which resulted in the decision we are reviewing here—and focus on his claims alleging ineffective assistance of

[1] Internal quotation marks, citations, and alterations have been omitted unless otherwise indicated.

counsel ("IAC") under *Strickland v. Washington*, 466 U.S. 668 (1984), and its progeny. After reviewing Mahdi's second state-court PCR proceeding, we summarize the federal district court's denial of his request for supplemental expert funding and his § 2254 petition.

A. The Underlying Conduct

Then-South Carolina Supreme Court Chief Justice Jean Hoefer Toal described Mahdi's criminal acts as "particularly heinous," emphasizing that in her time as a jurist, she "ha[d] seen few cases where the extraordinary penalty of death was so deserved." *Mahdi v. State*, 678 S.E.2d 807, 808–09 (S.C. 2009) (Toal, C.J., concurring). We recite the following from her opinion concurring in that court's rejection of Mahdi's direct appeal and affirming his death sentence:

> On July 14, 2004, [Mahdi], then a resident of Virginia, embarked upon a crime spree that would span four states. [He] stole a .380 caliber pistol from his neighbor, a set of Virginia license plates, and a station wagon. [Mahdi] left Virginia and headed to North Carolina.
>
> On July 15, [Mahdi] entered an Exxon gas station in Winston-Salem, North Carolina armed with the .380 pistol. [He] took a can of beer from a cooler and placed it on the counter. The store clerk, Christopher Jason Boggs, asked [Mahdi] for identification. As Boggs was checking [his] identification, [Mahdi] fatally shot him at point-blank range. [Mahdi] fired another shot into Boggs as he lay on the floor. [Mahdi] then attempted unsuccessfully to open the store's cash register. [He] left the store with the can of beer, and headed to South Carolina.
>
> Early in the morning of July 17, [Mahdi] approached Corey Pitts as he sat at a traffic light in downtown Columbia, South Carolina. [Mahdi] stuck his gun in Pitts' face, forced him out of his car, and stole Pitts' Ford Expedition. [Mahdi] replaced the Expedition's license plates with the plates he had stolen in Virginia, and headed southeast on I-26.

> About thirty-five minutes down the road, [Mahdi] stopped at a Wilco Hess gas station in Calhoun County and attempted to buy gas with a credit card. The pump rejected the card, and [Mahdi] spent forty-five minutes to an hour attempting to get the pump to work. Due to his suspicious behavior, the store clerks called the police. Aware that the clerks' suspicions had been alerted, [Mahdi] left the Expedition at the station and fled on foot through the woods behind the station.
>
> About a quarter to half mile from the station, [Mahdi] came upon a farm owned by Captain James Myers, a thirty-one year veteran law enforcement officer and fireman. [Mahdi] broke into a work shop on the Myers property. Once inside the work shop, [Mahdi] watched television and examined Myers' gun collection. [Mahdi] found Myers' shotgun and used the tools in the shop to saw off the barrel and paint it black. [Mahdi] also took Myers' .22 caliber rifle and laid in wait for Myers.
>
> That day, Myers had been at the beach celebrating the birthdays of his wife, sister, and daughter. Myers had visited with his father before returning to his farm. Upon arriving at the farm, Myers stopped by the work shop, where he was confronted by [Mahdi]. [Mahdi] shot Myers nine times with the .22 rifle. [Mahdi] then poured diesel fuel on Myer's [sic] body and set the body on fire. [Mahdi] stole Myers' police-issued truck, and left with Myers' shotgun, his .22 rifle, and Myers' police-issued assault rifle.
>
> Later that evening, Myers' wife, also a law enforcement officer, became worried when Myers did not return home. Mrs. Myers drove to the work shop and discovered Myers' burned body lying in a pool of blood.
>
> [Mahdi] escaped to Florida, where he was spotted by police on July 21 driving Myers' truck. Fleeing the police, [Mahdi] abandoned the truck [and proceeded] on foot in possession of the assault rifle. When cornered by police, [Mahdi] abandoned the rifle and was eventually taken into custody.

Id. at 809.

B. The Plea Hearing

On August 23, 2004, the Calhoun County, South Carolina, Grand Jury indicted Mahdi for Captain Myers' murder, second-degree burglary, and grand larceny. The State filed a Notice of Intent to Seek the Death Penalty and a Notice of Evidence in Aggravation,

alleging Mahdi killed Captain Myers: (1) "while in the commission of burglary"; (2) "while in the commission of robbery while armed with a deadly weapon"; and (3) "while in the commission of larceny with use of a deadly weapon." J.A. 935 (citing S.C. Code Ann. § 16-3-20). The State later filed an amended Notice of Evidence in Aggravation, alleging an additional statutory aggravating factor: (4) the murder occurred during "the performance of [Captain] Myers' official duties as a law enforcement officer." J.A. 937.

In November 2006, Mahdi went to trial. Following three days of voir dire, the trial court judge, Judge Clifton Newman, empaneled a jury. Soon thereafter, the Solicitor announced "a security issue," explaining that court security had discovered "a homemade handcuff key" in Mahdi's pocket during a brief recess. J.A. 1167. Mahdi "indicated . . . he had made [the key] in the department of corrections. He had been transporting it in his mouth and ha[d] attempted to use it at the jail, but he hadn't had the opportunity to use it [at the courthouse]." J.A. 1168. The Solicitor and Sheriff recommended—and Mahdi's counsel, Glen Walters, Sr., and Joshua Koger, Jr. (collectively "trial counsel") agreed—to put his legs in irons and chains for the duration of the trial.

After the trial court resolved the security issue and dismissed the jurors for the day, the proceedings continued in chambers at Mahdi's trial counsel's request for "an ex parte conversation . . . concerning this case and a possible resolution." J.A. 1173–74. There, they informed the court that Mahdi was considering "whether he should proceed forward with trial or whether he should go in front of [the trial court] and plead guilty." J.A. 1179. To that end, Walters represented—in Mahdi's presence—the following:

> [He] discussed with [his] client options that are available with regards to this case. Mr. Mahdi is very intelligent and in conveying the options to him, of course, he's aware of the fact that there are two phases to a trial, the guilt phase and also the sentencing phase, if it should reach that point.
>
> One option that was discussed with Mr. Mahdi was with regards to the guilt phase. And, of course, there's been a discussion with regards to the balancing of options or the lesser of two evils in that process.
>
> What's been conveyed to Mr. Mahdi is . . . that there are no guarantees with regards to either process. We have a jury that's been empaneled and there are certain pluses and minuses with that jury. And, of course, Mr. Mahdi's in a position where he's saying, well, what about the judge. And, of course, Your Honor's conveyed from the beginning that there is no policy by this Court that they will agree to a plea or agree to a certain sentence being rendered.
>
> So I've explained to him that there are no guarantees wherever you go. And, of course, he's pondering the issue of whether he should proceed forward with trial or whether he should go in front of Your Honor and plead guilty.
>
> Of course, with the second phase with regards to the sentencing phase, he has been informed that the State will have to put up their case and information and, of course, he'll be allowed to put up information. The question is whether he will do that in front of a jury or whether he will do that in front of a judge. And, again, there are no guarantees and there are pluses and minuses with regards to either option that he pursues.

J.A. 1178–79. Mahdi never interjected or contradicted counsel's representations. The court allowed Mahdi to consider his options overnight.

The next morning, the trial court resumed the ex parte conference with trial counsel and Mahdi and explained that

> the law provides that if the defendant pleads guilty, the sentencing proceeding will be conducted before the Judge. And that's statutory. And that's the same as in any criminal proceeding that if a person pleads guilty, the Judge does the sentencing.
>
> . . . .
>
> And this is certainly not . . . being mentioned to suggest that that is advisable or not advisable. It's simply the law. . . . And after more closely reviewing

> the statute and also the case of *State v. Downs*, it is clear that sentencing is conducted by the Judge in any capital case where a defendant pleads guilty.

J.A. 1183–84. Mahdi indicated that he understood and agreed to plead guilty to all charges.[2]

During the subsequent plea hearing, Mahdi's counsel averred that he had

> explained to [Mahdi] his constitutional rights, including the right to have a jury trial and the rights to have the jury determine whether his sentence would be life without the possibility of parole, if he were to be found guilty during the guilt phase of the trial, or the jury could return a verdict for death[.]

J.A. 1193. The court also detailed the mechanics of a jury trial and the rights Mahdi would waive by pleading guilty. Specifically, the trial court emphasized that "in order for a jury to find [him] guilty, all 12 jurors must unanimously agree" and "in order for a jury to recommend a death sentence, . . . all 12 jurors must agree to recommend the death sentence." J.A. 1197. Mahdi indicated that he understood he had "the constitutional right to have the jury decide [his] guilt or innocence and, also . . . the constitutional right to have the jury determine [his] sentence." J.A. 1197.

The trial court further explained that if it were to accept Mahdi's guilty plea, "the jury [would] have no role in [his] sentencing and the decision as to what sentence [he would] receive [would] be left solely up to [the trial court]." J.A. 1198. The court then engaged in the following dialogue with Mahdi:

---

[2] At the trial court's insistence, Mahdi met with Dr. Michael Cross to assess his competency before entering the plea. Dr. Cross testified that Mahdi "understood the risks and benefits of entering into this plea . . . and had a rational understanding of both, what the possible consequences for each"—i.e., trial and sentencing by a jury or guilty plea and sentencing by a judge—"[could have] be[en]." J.A. 1189. Mahdi also "had a good understanding of the process," "had a factual knowledge of the legal system," and knew "what he [was] doing." J.A. 1190.

The Court:	And do you voluntarily give up such a right [to be tried and sentenced by a jury]?
Mahdi:	Yes, sir, Your Honor.
The Court:	And do you understand what waiving that right means?
Mahdi:	I do, Your Honor.
The Court:	And what does it mean?
Mahdi:	It means I've given up all of my rights to a 12 party jury. And I just admitted guilt to the crimes I'm being charged with.
. . . .	
The Court:	And have you discussed with your lawyers thoroughly the constitutional safeguards that you have and the essential protections inherent in a jury trial?
Mahdi:	I was made fully aware of that by my attorneys.

J.A. 1198, 1200. Mahdi further indicated that he was "satisfied with the services of [his] attorneys in this case," that they had represented him effectively, and that they had "done everything to the full extent of their power to assist . . . and defend [him]." J.A. 1201–02.

The court accepted Mahdi's guilty plea and scheduled the sentencing hearing.

C. The Sentencing Hearing

Over the course of three days, the trial court "heard additional evidence in extenuation, mitigation [and] aggravation of the punishment" as well as "the arguments of counsel for or against the sentence to be imposed." J.A. 1661. The State reiterated its intention to seek the death penalty, while Mahdi's counsel urged the trial court to sentence him to life without the possibility of parole.

1. The State's Evidence in Aggravation

The State sought to prove that Mahdi had "killed Captain Jimmy Myers . . . because his heart and mind [were] full of hate and malice." J.A. 1223. In doing so, the State called

twenty-eight witnesses to testify about: (1) the events leading up to Captain Myers' murder; (2) the murder; (3) Mahdi's arrest; (4) his prior criminal history; (5) his behavior while in custody; and (6) the impact Captain Myers' death had on his friends and family. The testimony most relevant to our present analysis is summarized below.

a. The Events Leading to Captain Myers' Murder

Detective Michael Poe from the Winston-Salem, North Carolina Police Department, testified about and introduced a surveillance tape showing Mahdi's execution-style murder of Boggs on July 15, 2004. Specifically, the tape showed Mahdi's movements throughout the store before "shoot[ing] [Boggs] in the face with the gun[,] . . . com[ing] up on to the counter[,] . . . and fir[ing] a second shot at [him]." J.A. 1420. The trial court viewed the tape over trial counsel's objections.

Corey Pitts, Mahdi's carjacking victim from Columbia, South Carolina, recounted that at around 3:25 AM on the morning of July 18, 2004, he was driving home. As he was sitting at a traffic light waiting to make a left turn, Mahdi approached his car, held a gun to his face, and directed Pitts to "[g]et the fuck out and walk." J.A. 1380.

b. Captain Myers' Murder

Officer Stephen Curtis, a former deputy sheriff in Columbia, was among the first responders to the scene of Captain Myers' murder. He testified that he found Captain Myers lying "face down in the workshop area." J.A. 1392. "There were several matches on him," all of which were spent, "and there was a heavy odor of gasoline." J.A. 1394. Officer Curtis testified that investigators recovered nine shell casings from the scene which were later

matched to Captain Myers' .22 caliber rifle discovered in Mahdi's possession upon his arrest.

Janice Ross, the forensic pathologist who performed Captain Myers' autopsy, testified that his clothing "was partially burned and smelled of diesel fuel." J.A. 1544. "He had some singeing of the hair in the back of the head and some thermal injury, burning of the skin, on the back and around the sides of the abdomen." J.A. 1545. Captain Myers also had nine gunshot wounds: three in his head, four in his chest, one in his abdomen, and one in his left hand. All but two would have been fatal or potentially fatal.

c. Mahdi's Arrest

Sergeant Darren Frost from the Satellite Beach, Florida, Police Department testified about the circumstances surrounding Mahdi's arrest. According to Sergeant Frost, Mahdi led officers on a brief chase while driving Captain Myers's stolen truck. As Mahdi stepped out of the vehicle and began to flee, Sergeant Frost saw him carrying Captain Myers' stolen rifle. Sergeant Frost testified that he drew his service weapon and directed Mahdi to drop the gun. Mahdi turned towards him, with his "hand . . . close to the trigger." J.A. 1232. As Sergeant Frost prepared to fire, Mahdi dropped the weapon and ran.

Sergeant Frost then released his canine, which tracked Mahdi to a condominium complex, where he was taken into custody. Sergeant Frost testified that he later "thanked [Mahdi] for not using [the weapon on him] . . . and allowing [him] to go home to [his] family that night," stating that a round from the rifle "would have gone through [him], [his] vest and [anyone] standing behind [him]]." J.A. 1243. According to Sergeant Frost, Mahdi "looked at [him], [with] very cold eyes," and said that the gun's "selector was stuck on a

three shot and [he did not] think [he] could have . . . shot [Sergeant Frost], the other cop, and . . . that fucking dog." J.A. 1243.

d. Mahdi's Criminal History

The State called several witnesses to present Mahdi's extensive criminal history. The testimony related to Mahdi's juvenile convictions is summarized first before turning to his adult conduct.

i. Juvenile Crimes and Convictions

Sheriff James Woodley from Brunswick County, Virginia, testified that he first met Mahdi as a young teenager while investigating a report of stolen property. Mahdi, who was fifteen at the time, was later convicted of breaking in and entering a house where he stole "speakers, [a] tape player and also . . . a handgun, a .44 caliber magnum." J.A. 1278.

After Mahdi failed to appear for sentencing in June 1998, an officer attempted to execute an order to remand him to the Virginia Department of Juvenile Justice ("DJJ"). At the same time, the officer tried to serve a show cause order on Mahdi's father, Shareef. When the officer arrived at Mahdi's grandmother's house—where they were living—Shareef came out, read the orders, said, "We're not going," and proceeded to run back into the house. J.A. 1278. Sheriff Woodley eventually arrived at the scene and spoke with Shareef through a window. At that time, "the other officers [were] putting on their gear, the bullet proof vests and getting weapons out of the vehicle." J.A. 1279. Sheriff Woodley heard Mahdi "holler to his father" that "[t]he mother fuckers got guns out there." J.A. 1279. Around nine hours after the standoff began, officers breached the house and arrested Mahdi and Shareef. After he was in custody, Mahdi told the officers escorting him that he was

"going to kill a cop before [he] die[s]." J.A. 1280. Sheriff Woodley made clear in his testimony that both Mahdi and his father were responsible for the standoff.

Officer Mike Koehler from the Richmond City Police Department testified about an encounter he had with Mahdi in November 2000. Officer Koehler went to Mahdi's "house with another officer . . . to serve a summons on him for slashing his mother's tires" along with "an outstanding detention order." J.A. 1307. Officer Koehler tried to take Mahdi into custody, but Mahdi "got upset" and "started to pull away." J.A. 1308. The officers wrestled with him, and Mahdi reached for one of their guns. Eventually, after using pepper spray and an ASP baton, the officers were able to subdue Mahdi. He later told Officer Koehler that "he slashed his mother's tires because she wouldn't come to the door when he knocked," referring to her as "a crazy bitch" and saying "that he should have killed her." J.A. 1309–10. Mahdi also "begg[ed]" the officers to "shoot him." J.A. 1310.

ii. Adult Crimes and Convictions

Turning to Mahdi's adult conduct, the State called Moises Rivera, a maintenance worker from Richmond, Virginia. Rivera said that on April 17, 2001, he discovered Mahdi standing outside of a window to an apartment where he did not live. Mahdi immediately "jumped [Rivera] and [they] started fighting." J.A. 1323. During the exchange, Mahdi stabbed Rivera once in the arm and five times in the back, puncturing one of his lungs. After Mahdi ran away, Rivera "took three steps, collapsed, started coughing up blood and . . . was rushed to [the hospital]." J.A. 1323.

Mahdi was convicted of malicious wounding and served thirty-nine months of active incarceration. Though he was also sentenced to fifteen years of supervised probation,

Joseph Owen, Mahdi's probation officer, testified that he only served two months before beginning the crime spree that ended in Captain Myers' murder.

Amanda Jean Weaver, Mahdi's next-door neighbor from Brunswick County, testified that he was anything but compliant during his time on probation between May and July 2004. Mahdi told her that he "was doing a little drug pedaling or pushing or whatever," J.A. 1349—i.e., selling marijuana—and that he "was going to knock [someone] off," J.A. 1363.

Weaver testified that she owned a .380 caliber semiautomatic pistol at that time. On July 13, 2004—the day before Mahdi left Virginia for North Carolina—Weaver returned home and discovered there had been a break-in, though nothing initially appeared to be missing. The following week, upon seeing news coverage of Mahdi's arrest, Weaver recognized his picture and began to fear for her safety. She went to retrieve her gun and discovered it was missing. Weaver later learned that Mahdi had stolen it and used it to kill Boggs.[3]

e. Mahdi's Behavior in Custody

The State called several witnesses to testify about Mahdi's failure to adapt to incarceration. We begin by summarizing his time at the DJJ before turning to his terms of incarceration with the Virginia and South Carolina Departments of Corrections ("VDOC" and "SCDC," respectively).

[3] Weaver also testified that Mahdi believed "all white people were white devils," J.A. 1357, and that he "had a very strong dislike for police officers," J.A. 1358.

i. The DJJ

The State called Linda Coulson, a former counselor at the DJJ's Reception and Diagnostic Center, who worked as "part of an assessment team to evaluate all [committed] juveniles," including Mahdi. J.A. 1285. Coulson testified that when she met Mahdi, he "was tested to have a full scale IQ of 108," which is considered "in the upper average range." J.A. 1288. During his intake interview, Mahdi "described himself as a quiet person who [was] always up to something. He denied . . . [having] any strengths except for robbing people." J.A. 1288. Mahdi also advised Coulson "that he had been involved in selling crack cocaine." J.A. 1289. He relayed his history of escapes and attempts to elude law enforcement. At bottom, Mahdi's comments suggested to Coulson "that he had little respect for the rights and property of others. He expressed no remorse" or "empathy for the impact of his acts upon others." J.A. 1290. In her final assessment, Coulson observed that Mahdi was "the product of a dysfunctional single parent family characterized by a lack of involvement with his mother, an absence of a positive adult role model, instability, unemployment, and a lack of structure and supervision." J.A. 1703.

Barbara Amos, who worked as a DJJ counselor, introduced portions of Mahdi's records from his time in custody there. These records reflected: Mahdi's regular meetings with counselors; consistent efforts by Shareef and Mahdi's grandmother, Nancy Burwell ("Nancy"), to visit and communicate with him and his counselors; as well as his various disciplinary violations for conduct including, among other things, attempted assault on an officer and the use of threatening language/behavior. At one point Mahdi made "suicidal statements" to his counselor before stating that "he would become homicidal first. He gave

very graphic descriptions of how he would hurt others. He also graphically described how [DJJ staff] would find [Mahdi's victims and him after he committed suicide] (i.e. 'hanging')." J.A. 1978–79.

ii. VDOC

To introduce Mahdi's VDOC records, the State called Cindy Collins, VDOC's criminal records manager. According to a summary of Mahdi's disciplinary record, he had a couple dozen violations, including setting fires, "[p]ossession of a sharpened instrument," and "[a]ssault on [a] non-inmate." J.A. 1698. Mahdi was transferred twice during his time in VDOC's custody due to his "continued poor institutional adjustment and increase in security level." J.A. 1698.

iii. SCDC

The State called several SCDC officers to testify about Mahdi's behavior while awaiting trial. Officer Henry Johnson spoke about a disciplinary hearing where Mahdi was charged with striking a correctional officer (who suffered a concussion). During the hearing, Mahdi said that "the next chance he [got], he[] [was] going to . . . kill that mother fucking officer. . . . The first chance he [got], he would finish him off." J.A. 1465. Officer Johnson also testified about a search he conducted in Mahdi's cell where he discovered "[s]ome rope and . . . some pieces of metal." J.A. 1466. Officer Terrance Prioleau testified about a separate search where officers discovered a piece of metal Mahdi had hidden in a hole in the wall.

Officer Janet Driggers testified about a grievance form she received from Mahdi, where he wrote,

> I cannot be diplomatic with you people, so my last action would be to kill you. Why not? You're no good to anybody. I could easily get someone to murder you. What is wrong with you, bitch? I bet you'll respond quick to this, won't you? You people think this shit is a game.

J.A. 1482. Officer Driggers testified that "[i]n [her] capacity as a grievance coordinator," this was the only time she "was ever threatened to be killed." J.A. 1489.

SCDC disciplinary officer Annie Sellers testified that Mahdi made additional threats during the subsequent disciplinary hearing. Even "[a]s he was being removed from the area and while he was out in the hallway, he was still making threats towards [Officer Driggers]." J.A. 1497.

Eventually, SCDC officials determined that Mahdi should be moved to more restrictive custody in the Kirkland Maximum Security Unit ("Kirkland"). Captain Gary Lane testified that Kirkland is "a 50 bed facility" reserved for "the worst of the worst inmates in the State of South Carolina." J.A. 1500. Within the facility, there are six cells in what is called the "High D Wing," where "the lights are kept on 24 hours a day, seven days a week" and inmates are monitored by video cameras "24 hours a day." J.A. 1501. That is where the SCDC housed Mahdi, meaning "he [was] one of the six most secure inmates in the whole department of corrections" at the time of his sentencing. J.A. 1502.

Captain Lane testified about separate incidents at Kirkland when they discovered various contraband in Mahdi's cell including: a "hammer-like weapon," J.A. 1502; "two pieces of a metal, one sharpened to a point," J.A. 1506; and pieces of "knotted rope," J.A. 1506.

f. Victim Impact Statements

Finally, the State called several witnesses, including Captain Myers' father, wife, and daughter, as well as his colleagues and friends on the police force, who testified about Captain Myers' character and the impact his death had on them.

2. Mahdi's Evidence in Mitigation

Mahdi's counsel began their mitigation presentation by asking the trial court for mercy, arguing that he "took full responsibility . . . for what he did" by pleading guilty, "that at the time of this particular crime, . . . he was 21 years of age and very young," and that he had a troubled childhood. J.A. 1224. No laypersons testified on Mahdi's behalf. Nor did he take the stand. Instead, trial counsel called two expert witnesses: James Aiken and Marjorie Hammock.

a. James Aiken: Prison Adaptability

Aiken, a former warden and prison adaptability expert, testified that the SCDC was equipped to handle Mahdi and that he would likely present no future threat while incarcerated. Though Aiken considered Mahdi's disciplinary infractions "serious," he testified that "when you compare [Mahdi's] contraband issues and the behavior issues . . . to the type of population that [the SCDC has] to manage, it's fairly reduced." J.A. 1565. The conduct was "[n]ormal and routine" and "a reflection of an immature boy in a big prison system." J.A. 1567. According to Aiken, Mahdi was "not demonstrating . . . predator[y] behaviors," J.A. 1566, i.e., he did not have "total control to call a signal and have an officer killed" or "caus[e] a riot between two rival gangs," J.A. 1581. Mahdi also was not "a person with connections with international terrorists that [could] call hits on

officials within the prison systems." J.A. 1581. He was, by Aiken's account, simply "immature and [had] done some very violent, stupid things." J.A. 1582.

b. Marjorie Hammock: Biopsychosocial Assessment

Mahdi's second witness was Hammock, a licensed clinical social worker and assistant professor at Benedict College in Columbia, South Carolina, who had an extensive background in capital litigation. Before Mahdi's sentencing, she had participated in twenty-five death penalty cases and had testified in fourteen of them.

Hammock's testimony centered on her biopsychosocial assessment[4] of Mahdi, which she prepared by "conducting interviews with family members, reviewing records, interviewing the defendant himself, [and] taking information from anyone who would give information about him, his life and his development." J.A. 1595. Specifically, Hammock interviewed "someone who was a part of the community," but "didn't know much about [Mahdi]," J.A. 1595, as well as his paternal grandmother Nancy, his paternal uncles Nathan Burwell ("Nathan") and Carson Burwell ("Carson"), and Lawanda Burwell ("Lawanda"),

[4] A biopsychosocial assessment considers

> all of the social, the biological and the clinical factors, [and] the environmental factors about the defendant and bring[s] them together to really form a family or a social history. It examines at every aspect of the life to present a picture, particularly in this instance to give some understanding as to why we are here and that resulted in his being in this situation.

J.A. 1594–95.

Carson's wife. She also spoke with Shareef; Mahdi's "mother, [Vera[5]] Mahdi; [Corliss Artis ("Corliss")], his maternal aunt; and Sophia Gee, . . . [an]other maternal aunt." J.A. 1596. Further, Hammock "reviewed a synopsis of [Mahdi's] school records" and a mental health report from when he was a juvenile. J.A. 1596.[6]

Hammock described Mahdi's childhood as "rather chaotic," highlighting "the nature of the transience [and] the changes in his living circumstances." J.A. 1597. She emphasized his parents' "inability . . . to parent appropriately and correctly," observing that Mahdi was "abandoned by his mother at quite an early age and that his father . . . had his own experiences which limited his ability to parent effectively." J.A. 1597.

Hammock testified at length about Shareef, whom she characterized as having "a lot of difficulties." J.A. 1598–99. She conveyed Shareef's

> experiences in desegregating the local school . . . and how traumatic that was for him. He was constantly in conflict with those around him. . . . [H]e considered himself unwanted.
>
> And so [Shareef's] own childhood was difficult and he grew up in a situation feeling alienated from anybody else around him. He didn't finish school. He was the only one in his sibling group that didn't and that was a source of consternation between he and his family members.

---

[5] Shareef changed his wife's name from "Vera" to "Tilea" upon their marriage. Testimony and other evidence from the record use both names interchangeably to refer to Mahdi's mother. For the sake of consistency, this opinion refers to her as "Vera."

Hammock described Vera as "very, very withdrawn" and indicated that she "did not want to participate in the interview at all, somewhat—really almost frightened about being involved with the family again." J.A. 1605–06.

[6] As discussed in greater detail below, Hammock did not work alone in compiling this information. Rather, along with trial counsel, she worked in conjunction with a private investigator, a mitigation investigator, a psychiatrist, and a forensic psychologist in their efforts to present mitigation evidence on Mahdi's behalf.

> This looked like an intact family that he grew up in, but they had their problems. There was alcoholism in the family and there was some neglect on the part of [Shareef's father]. And, again, this also culminates in [Mahdi's] father deciding to become a Muslim, change his name, which also brought some grief to the family.
>
> So [Shareef] . . . goes to the Marines, he gets out. . . . [H]e says he has an honorable discharge, but it was under some circumstances that really kind of compromised the nature of that discharge. . . . He has odd jobs, but he's not really able to function well. There is some description of continuing depression and a number of incidents with law enforcement locally.
>
> At the age of 27, he meets and participates in an arranged marriage with [Vera,] a 16-year-old woman from Richmond, whose mother helped to arrange the wedding. [Vera was] not supportive of this, but she has no choice but to join the marriage and that marriage was conflict from the very, very beginning.
>
> [Mahdi's] older brother [Saleem] is born and then [Mahdi] is born into this family, which is very unstable and chaotic. [Mahdi's] father is not able to take care of his family. They move several times, ultimately ending back in Lawrenceville [Virginia] living with [Shareef's] mother and not able to, again, sustain himself.
>
> There is a great deal of conflict described between . . . [Vera] and [Shareef]. And this the children witnessed. Ultimately, [Mahdi's] mother leaves the family and she describes her trying to get away from the abuse.

J.A. 1599–1600. Hammock explained that Shareef attempted to care for the boys with his family's help, but that "the relationship between [Mahdi's] father and his grandmother and the other members of the family" was "constantly confrontational." J.A. 1601. During this time, Vera was "forced to return . . . ostensibly to see the boys," but that resulted in "some physical conflict. And she [left] again not to see her son for a number of years." J.A. 1601.

In 1991, when Mahdi was eight years old, he went to live with his paternal uncle and aunt-in-law, Carson and Lawanda, in Baltimore. They discovered he "simply could not

read even though he appeared to have other kinds of skills." J.A. 1602. Hammock summarized Mahdi's relevant school history:

> [H]e spends the second and the third grade in Scotts Branch Elementary School in Baltimore, Maryland. And he has uneven skills. He's placed in an average math program, but . . . below average reading programs. And the narrative indicates that he needs improvement in a number of areas, including standards for behavior, showing respect for authority. And his reading and writing skills remained below grade level.
>
> That continues in the third grade and . . . it's especially noted again the [unevenness] of his performance because he is considered by his teacher, in that year, that he was outstanding in science; however, the reading and the vocabulary and the spelling remain below average. It's also noted several places where he clearly has poor self-esteem and often has difficulty with relationships with others.
>
> Ultimately, he leaves school [in Baltimore] and is placed in . . . a mental health facility [the "Carter Center"]. And after he is released . . . , he stays only with his aunt and uncle for a short period of time[.]

J.A. 1604–05. By the time Mahdi returned to Brunswick County, his father was "known to be at odds with people in the community, with his own family and with law enforcement." J.A. 1610.[7] But Mahdi "care[d] about his father, wanted more than anything else an intact family and an ongoing relationship, but that just didn't happen." J.A. 1610. That said, Mahdi never received "the consistent help in growing up and developing good skills and developing a sense of values. Even though folks tried, it just wasn't consistent enough for him to learn how to do those kinds of things." J.A. 1610.

Hammock concluded that Mahdi had "been traumatized throughout his early life," which "had an impact on his inability to make good choices, to have a good sense of himself

[7] Hammock testified that Mahdi "live[d] with [his mother] for a very short period of time, . . . but it was not a good reunion. They did not get along at all." J.A. 1607.

and others and to behave according to societal norms." J.A. 1611. In short, she told the trial court, "[h]e never had really a chance to develop appropriately." J.A. 1611–12.

During Hammock's testimony, trial counsel submitted a "Time Line" of the major events in Mahdi's life, which included the following entries among others:

> - 1955[8]: Sareef [sic] enters a desegregated school, 5th grade. The experience was destructive. He was ridiculed, isolated, challenged physically by classmates, ignored or received negative feedback from some instructors. Felt traumatize[d] by the experience. Only child in the family that does not finish high school. Sareef [sic] described as disturbed as a young child, threw tantrums, Mother not emotionally available[.]
>
> . . . .
>
> - 1975: Sareef [sic] converts to Islam. Sareef [sic] involved in a series of misdemeanors locally all said to be racially motivated.
>
> - 1980–81: Sareef [sic] age 27 and Vera (Tilea) age 16 marry. The marriage is arranged by Vera's mother, who is raising 16 children. Sareef [sic] changes Vera's name to Tilea.
>
> . . . .
>
> - March 20, 1983: Mikal Mahdi born.
>
> . . . .
>
> - 1986: Vera (Tilea) leaves Sareef [sic] and the boys. Sareef [sic] lives in the Burwell home with the boys. Sareef [sic] took [the] boys to Richmond to live but could not keep a job, could not supervise or provide care for the boys. Sareef [sic] moves back to Lawrenceville. Sareef [sic] can not [sic] take care of himself or the boys.
>
> - 1988: Vera (Tilea) is taken to Lawrenceville from Richmond by Sareef [sic] who abuses her. Nathan rescues Vera. Mikal and Saleem witness more abuse and violence.
>
> . . . .

[8] This date is obviously incorrect, given that the Time Line lists Shareef as being born in 1954.

- October 1991: Saleem sent to Texas to live with aunt. Mikal went to Baltimore to live with Uncle Carson and Aunt Lawanda Green Burwell. Carson described Mikal as very smart but unable to read at age 8.

- August 23, 1992: Mikal involuntarily admission in a psychiatric facility after suicide threat/gesture and Mikal hospitalized Admission DX Axis I, Major Depression with suicidal ideation, adjustment disorder, R/O Adjustment Disorder, Axis II Developmental Reading Disorder, Axis III Hx of right arm and right leg fractures. Saleem comes back from Texas after disrupting his aunt[’s] home.

- October 19, 1992: Mikal Discharged from Walter P. Carter Mental Health. Discharge DX Axis I Major Depression, Single episode. Mikal also becomes more disruptive in his uncle’s home in order to force his return to Lawrenceville to join his father and brother. He has become even more defiant after he learns that his brother has joined his father. The three reunite and live on Burwell property with the boys. This was an isolated place in the country and they often had no food, heat or money.

- December 1997: Mikal sent to reception and diagnostic center—Culpepper in a juvenile facility for two counts of b & e and two counts of grand larceny. Mikal released from facility and Sareef [sic] sent Mikal to Richmond to live with his mother[.]

- December 1997: Mikal committed to juvenile facility

- April 2001: Mikal transferred VA Dept of Corrections

J.A. 6322–23.

D. The Trial Court’s Sentence and Mahdi’s Direct Appeal

After hearing closing arguments and taking a day to deliberate, the trial court sentenced Mahdi on December 8, 2006.[9] The court began by summarizing the underlying facts before finding that the State had proven two of the alleged statutory aggravating

[9] During the sentencing hearing, the trial court reaffirmed that Mahdi “understood that as a consequence of his guilty plea to murder while in the commission of burglary and grand larceny, that the Court would conduct a separate sentencing proceeding and determine whether he should be sentenced to life imprisonment without the possibility of parole or death.” J.A. 1661. Neither Mahdi nor his trial counsel objected to this statement.

factors beyond a reasonable doubt—that Mahdi had killed Captain Myers "while in the commission of burglary" and "while in the commission of larceny with use of a deadly weapon," J.A. 935 (citing S.C. Code Ann. § 16-3-20)—meaning Mahdi was eligible for the death penalty.[10]

The trial court then summarized the State's evidence in aggravation, which it described as "compelling" and "established by clear and convincing evidence the defendant's bad character and propensities." J.A. 1665, 1668. "These incidents covered a period of over eight years showing [Mahdi] committing a series of crimes, including housebreaking, stealing guns, robbing people, selling crack cocaine, vandalism and malicious wounding." J.A. 1665–66. And "[d]uring each of these periods of incarceration, Mr. Mahdi's behavior was maladaptive, assaultive and demonstrated an utter disrespect for authority, including threatening the life of a detention officer." J.A. 1667. Moreover, "[w]hile in safekeeping in the South Carolina Department of Corrections awaiting this trial, Mr. Mahdi made numerous threats to kill various department employees." J.A. 1668.

The trial court then considered and rejected each of Mahdi's arguments in mitigation before announcing its decision:

> Defense counsel argues that the defendant's youth should be considered by the Court in determining the appropriate sentence to be imposed.
>
> Mikal Deen Mahdi was 21 years old at the time of the murder of Captain Myers. When last tested at age 14, the defendant's IQ was 108, slightly above

[10] The trial court expressly found the State had not carried its burden of proof on the other statutory aggravating grounds and thus had not proved beyond a reasonable doubt that Mahdi killed Captain Myers "while in the commission of a robbery while armed with a deadly weapon" or "during or because of the performance of [Captain Myers'] official duties" as a law enforcement officer. J.A. 1664–65.

average. While this is a young age for such a serious crime, Mikal Deen Mahdi began his criminal career at an early age having entered the Virginia Department of Juvenile Justice at 14. He is experienced in the world of crime. By the time he committed these crimes, Mr. Mahdi was well aware of the severity of his crimes and the possible consequences.

I have considered the defendant's young age, but I have not afforded it great weight in reaching my decision. There is nothing about Mr. Mahdi's age or mentality that in any way mitigates, excuses or lessens his culpability and neither should it be given any significant weight in the Court's ultimate decision as to his sentence.

I have also given consideration to what the defense contends to be the defendant's turbulent and transient childhood and upbringing. In reviewing the testimony of Marjorie Hammock, the defense's clinical social worker expert, there's no reference to physical or sexual abuse suffered by the defendant. In addition, records of the Virginia Department of Juvenile Justice indicates [sic] that the defendant's father, brother and grandmother continually expressed great care and concern for his well-being.

While Mr. Mahdi's family life may have been less than ideal, particularly without the presence of a loving and caring mother, I do not believe that his difficult childhood and family life contributed in any significant way to his senseless criminal activities; therefore, while I have considered this . . . nonstatutory mitigating circumstance, I do not believe that it should be given any significant weight in the Court's ultimate decision as to the sentence to be imposed.

The defense presented testimony from Mr. James Akin, a prison adaptability expert. Mr. Akin, a highly credential[ed] expert, testified concerning Mr. Mahdi's potential adaptability to prison life.

I have considered and reviewed Mr. Mahdi's records regarding his prior behavior in various correctional institutions. He has consistently been disruptive and uncooperative and has threatened to kill prison employees. Officers have repeatedly found homemade weapons, ropes and other contraband in the defendant's cell.

During this trial, the defendant brought a homemade handcuff key into the courthouse with the intent of using it, if possible, to escape, thus, posing a serious threat to courtroom security. The Sheriff of Calhoun County testified that Mr. Mahdi stated to him that he made the key while being housed and monitored at the State's highest security level facility.

> While Mr. Akin gave impressive testimony, based on Mr. Mahdi's behavior in correctional institutions throughout his adolescence and adult years, I do not believe that he is sufficiently adaptable to prison life for this nonmitigating [sic] circumstance to be given any significant weight in the Court's ultimate decision as to the sentence to be imposed.
>
> The defense further . . . argues as a nonstatutory mitigation circumstance that the Court should consider the defendant's guilty plea in determining the appropriate sentence to be imposed.
>
> The defendant's guilty plea occurred during the fourth day of his trial following jury selection, but prior to the jury being sworn. This was one day following his attempted escape through the use of a homemade key. In addition, Mr. Mahdi has failed to demonstrate any remorse for his actions at any point in time known to this Court. Therefore, I conclude that no significant weight should be given to this nonstatutory mitigating circumstance and the Court's ultimate decision as to the sentence to be imposed.
>
> . . . .
>
> My challenge and my commitment throughout my judicial career has been to temper justice with mercy and to seek to find the humanity in every defendant that I sentence. That sense of humanity seems not to exist in Mikal Deen Mahdi.
>
> . . . .
>
> Today, the defendant also seeks mercy, the same mercy that perhaps Captain James E. Myers sought for an instant before Mikal Deen Mahdi fired nine bullets into Captain Myers' body from one of Captain Myers' prized weapons before setting his body on fire with matches and diesel fuel belonging to Captain Myers. In extinguishing the life, hope and dreams of Captain Myers in such a wicked, depraved and consciousless [sic] manner, the defendant Mikal Deen Mahdi, also extinguished any justifiable claim to receive the mercy he seeks from this Court.

J.A. 1669–74.

The trial court sentenced Mahdi to death for Captain Myers' murder, fifteen years of incarceration for second-degree burglary, and ten years for grand larceny, to be served consecutively. Mahdi appealed to the Supreme Court of South Carolina, raising a single

issue not relevant here. That court affirmed. *Mahdi*, 678 S.E.2d at 136. He did not appeal to the U.S. Supreme Court.

E. The First State-Court PCR Proceedings

After exhausting his direct appeals, Mahdi filed an initial pro se PCR application in South Carolina state court. The Supreme Court of South Carolina assigned the case to a judge (the "PCR court"), who subsequently appointed statutorily qualified counsel ("PCR counsel"). PCR counsel filed several amended PCR applications, raising the following relevant IAC claims:

- The "Jury Sentencing Claim": Trial counsel failed to adequately advise Mahdi of the advantages of jury sentencing, which resulted in him pleading guilty and purporting to waive his right to jury sentencing;

- The "Mitigation Evidence Claim": Trial counsel failed to adequately investigate, develop, and present mitigation evidence concerning Mahdi's family, social, institutional, and mental health history; and

- The "Judicial Sentencing Claim": Trial counsel failed to assert that S.C. Code Ann. § 16-3-20[11] is unconstitutional because it automatically precludes jury sentencing following a guilty plea in violation of the Sixth, Eighth, and Fourteenth Amendments as addressed in *Ring v. Arizona*, 536 U.S. 584 (2002). Though PCR counsel acknowledged that South Carolina state courts had rejected this argument, *see State v. Downs*, 604 S.E.2d 377 (S.C. 2004), they nevertheless maintained it had not been reviewed by federal courts and that trial counsel were thus ineffective in failing to adequately preserve the record for subsequent litigation.

[11] South Carolina Code § 16-3-20(B) provides:

> If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment.

The PCR court scheduled an evidentiary hearing during which it "had the opportunity to view and hear the witnesses who testified in person, and make a credibility assessment with regard to each witness." J.A. 7524.

1. Mahdi's PCR Evidence

PCR counsel's presentation focused on the Mitigation Evidence claim. Specifically, they argued that trial counsel "presented . . . short[,] brief[, and] cursory testimony from Ms. Hammock," J.A. 2212, which conveyed "the basics of the story . . . with a very broad brush," but omitted crucial details. J.A. 2213–14. PCR counsel promised "to show the humanity" in Mahdi that the trial court could not find. J.A. 2213. In doing so, they called members of Mahdi's family, non-family lay witnesses, and mental health experts.

a. Mahdi's Family Members

Four members of Mahdi's extended family—one uncle and three aunts—testified on his behalf. None of his immediate family members—Shareef, Vera, or Saleem—were present at the evidentiary hearing or submitted affidavits to the PCR court. We first summarize the testimony from Carson and Lawanda before turning to Mahdi's maternal aunts, Rose Gupton ("Rose") and Sophia Gee ("Sophia").

i. Carson and Lawanda

Carson began by recounting the role that race played in Mahdi's paternal family, the Burwells. He described Shareef's enrollment in a predominantly White school in Lawrenceville as "a fairly terrible experience," which resulted in him becoming angrier, "a lot more uncontrollable, a lot more despondent," and hostile towards White people. J.A.

2229–30. Carson also remembered his mother, Nancy, as someone obsessed with race who was constantly trying to "pass[]" as White.[12] J.A. 2232.

According to Carson, Shareef was the only one of his siblings who did not graduate from high school or attend college. Instead, he enlisted in the U.S. Marines. Carson testified that "something happened to him [during his service]. He had a discharge and . . . [i]t was not good. . . . [I]t made him a more radical person, [an] angry person[.]" J.A. 2235.

Turning to Mahdi's childhood, Carson testified that Vera "wasn't cruel, but she just wasn't doting." J.A. 2240. In contrast, Shareef was "very affectionate, very concerned, very much concerned. . . . [H]e was always doting on his sons and always very, very affectionate with them." J.A. 2240. "He certainly tried to . . . show favoritism to [Mahdi] as much as he could[.]" J.A. 2240. However, according to Carson, Shareef was incapable of adequately raising his children: "He never had a job to speak of—consistently [un]employed . . . They didn't consistently go to school and he lived in public housing and section eight or whatever. No, he couldn't take care of them." J.A. 2241. Lawanda agreed, suggesting that Shareef's constant moving was due, in part, to his efforts to "stay under the

[12] Lawanda described Nancy as someone who "definitely wanted to be more than she thought people thought she was." J.A. 2449. For instance,

> [i]f she went to downtown and interacted with white people, they knew she was a light red-headed black woman, but when she left Lawrenceville then it depended upon what people thought. If they didn't think she was black, she could be white, and if they did, well, she'd be black.

J.A. 2450. Lawanda attributed "the family lightness and red hair" to Nancy's grandfather, who "was the product of a relationship between a slave and an [I]rish woman." J.A. 2496. The "woman was sent to Boston with child and the father of the child disappeared, was never seen again." J.A. 2496.

radar with the . . . educational system" by not drawing too much attention due to the boys' mounting absences. J.A. 2464.

After one visit where Carson found Mahdi and his brother skipping school, "playing out in the yard and being destructive, tearing up toys that were left out," while Shareef was "not really noticing what they were doing . . . not saying anything," J.A. 2243–44, he decided to take Mahdi to live with him and Lawanda in Baltimore.

Carson described that experience as a very difficult period. At one point, he had to attend a meeting with Mahdi's principal because Mahdi made several suicidal statements such as, "Well, why doesn't someone just shoot me?" and "If I had a gun I would just shoot myself." J.A. 2248. Carson testified that Mahdi made similar statements at home as well. Despite these threats, Carson concluded Mahdi "didn't really want to kill himself. . . . He was just playing games." J.A. 2265. Lawanda agreed, testifying that Mahdi would often say, "Just shoot me," J.A. 2467, but she "never thought that he was serious about it," J.A. 2468.

To that end, Carson recounted an incident when he came home and found his wife "giving [Mahdi] a whipping," which he "monitor[ed] to make sure she didn't go overboard." J.A. 2248. Lawanda testified that she took Mahdi's belt and spanked him with it, though her "purpose was not to really hurt him but to let him know that [she] was in charge." J.A. 2467. Afterwards, Mahdi "put soot on his face, on parts of his body to make it look like it was bruised and some ketchup on his face and called 9-1-1 and the police came to the door." J.A. 2248. The officers took Mahdi to the hospital, where he told them, "You need to just give me your gun so I can shoot myself," and they "took him straight to"

the Carter Center. J.A. 2250. "It took [Carson and Lawanda] two months to get him out of there[.]" J.A. 2250. While Mahdi was committed, Lawanda testified that his doctors told her that Mahdi was being disruptive, "throwing chairs" and "kicking doors," and that they had to put him in isolation. J.A. 2493.

Upon his release, the Carter Center recommended Mahdi receive follow-up care and counseling. Carson testified that he "sent [Mahdi] to a psychiatrist every Monday" for "[t]hree or four months." J.A. 2252. But, according to Lawanda, Mahdi refused to talk during these sessions.

Carson testified that he did not remember being interviewed by anyone from Mahdi's South Carolina defense team but that he "most definitely" would have testified on Mahdi's "behalf and [told] the family story." J.A. 2256. Carson further stated that he would have asked for mercy because Mahdi "didn't have a chance in hell" because of "the parenting he had, the moving around, the mother abandoning him, all kinds of poverty, hunger at times, clothing—lack of. You name it." J.A. 2257.

Lawanda remembered speaking with Mahdi's South Carolina defense team after his arrest but said she was not asked to testify. At the PCR evidentiary hearing, when asked in retrospect if she would have been willing to speak on Mahdi's behalf, she responded that she was "not sure." J.A. 2477.

ii. Mahdi's Maternal Aunts

Rose testified about Mahdi as a child, describing him as "very angry. He was angry. . . . [He threw] cereal bowls across the kitchen floor. He hit [his mother] a couple of times."

J.A. 2288. Sophia described Vera as "really protective," even "over-protective," of Mahdi and his brother. J.A. 2296–97. "She wouldn't let them play." J.A. 2297.

That said, according to Rose and Sophia, the only reason Vera left her sons under Shareef's care when she fled the relationship was "[b]ecause he threatened to kill her if she took them and he meant it, too." J.A. 2288, 2298. After Vera left, Shareef "wouldn't let her see [the boys] or speak to them, but . . . she used to send them toys and clothes." J.A. 2298. Sophia testified that Shareef "was abusive; that he used to beat [Vera] and he was controlling." J.A. 2298. She recounted a time when Vera came to her house "covered in bruises from head to toe and she said Shareef beat her up. She was trying to see the children and he beat her up." J.A. 2299. Years later, when Mahdi was around sixteen or seventeen, Sophia tried to reunite him with his mother. She testified that, at the time, neither Mahdi nor his brother knew she was alive. "[A]t first [the reunion went well] but then after a while . . . it went bad." J.A. 2301. Mahdi "slashed her tires" because Vera "wouldn't let him use the car." J.A. 2306–07.

Rose said she did not speak with anyone from Mahdi's South Carolina defense team before his trial. Indeed, she claims to have not even been aware that he had been arrested for capital murder until her sister told her he had already been convicted. In contrast, Sophia testified that she, along with her sister Corliss spoke with the South Carolina defense team

for around an hour.[13] Both Rose and Sophia stated they would have testified on Mahdi's behalf during his sentencing hearing had they been asked.[14]

b. Non-Family Lay Witnesses

PCR counsel also called several lay witnesses from Mahdi's childhood. Myra Harris, Mahdi's third-grade teacher from Baltimore, testified that he was prone to outbursts and came to her class with significant gaps in his education. According to Harris, "sometimes the anger would get to a level where . . . he would have to go into a time out." J.A. 2325. Other times he refused to do work. And on one occasion, Mahdi ran "out of the classroom," out of the building, "and ha[d] to be retrieved." J.A. 2326. Nevertheless, his behavior improved during his time in her class after he and Harris developed a relationship.

Carol Wilson, Mahdi's fifth-grade teacher from Brunswick County, presented a similar narrative. She testified that Mahdi was referred to the child study team as a candidate for special education based on his behavioral deficiencies. Wilson observed that Mahdi's marks on the Burks Rating Scale—which tests behavior—demonstrated "very significant and excessive self-blame, poor impulse control, and excessive resistance. He ha[d] also exhibited periods of extreme sadness at times." J.A. 2335. Wilson concluded Mahdi was "unable to cope with these feelings," making "him unable to function and

[13] Rose testified that she spoke with Sophia and Corliss "every day" and did not believe either was aware of Mahdi's trial. J.A. 2291.

[14] PCR counsel also submitted an affidavit from Mahdi's paternal aunt, Sandra Wynn Burwell ("Sandra")—Nathan's ex-wife—much of which was devoted to the Burwell men's ineptitude in supporting their families. Sandra also addressed Shareef's volatile relationship with Vera, including his attempt "to kill [her] with their sons watching." J.A. 2931.

effectively learn in school." J.A. 2335–36. That said, the child study team, which she chaired, determined he "had a full scale IQ of 118," and Wilson considered him "an intelligent kid." J.A. 2337.

Wilson's team later had a meeting to discuss Mahdi's eligibility for special education, which Shareef attended. According to Wilson, when the team's psychologist presented his findings, Shareef "became very angry . . . and he got up and he cursed us and he left," saying "that he didn't want any white man writing negative reports about his son." J.A. 2333. Ultimately, the team determined Mahdi was "eligible for the emotionally disabled program with recommended assistance in the area of reading." J.A. 2341. They also recommended that he receive counseling.

Eventually, Shareef allowed Mahdi to join Wilson's class, albeit briefly. She described Mahdi as "depressed and . . . very sad," but "never disrespectful." J.A. 2344. But "it came [to] a point of time that [she] had to sit him next to [her] in order for him to get his work done." J.A. 2344. Mahdi liked to draw, but Wilson testified "he would use ink and draw pictures of people hanging, the nooses and things like that." J.A. 2345. Mahdi did not finish the school year due to Shareef's decision to homeschool the boys. After that, Wilson said Mahdi "got lost in the cracks." J.A. 2348. Neither Harris nor Wilson spoke with Mahdi's South Carolina defense team, but both stated they would have testified on his behalf at sentencing. Both teachers conceded that they had no knowledge about Mahdi's home life.

George Smith also testified at the PCR hearing. Smith was well-known and respected in the local Black community for having successfully sued Brunswick County

under the Voting Rights Act. According to Smith, Shareef admired him "for taking on these white people and winning because . . . he didn't particularly like white people. . . . [H]e just hated them with a passion." J.A. 2371–72. Smith recalled an incident when Shareef jumped into the local White swimming pool and refused to leave. According to Smith, Shareef "was in the pool swimming around and cursing, using extremely vile language . . . and hollering as loud as he possibly could as to try to inflame these policemen that were standing around." J.A. 2374–75. The police called Smith and asked him to help resolve the issue. Eventually, Shareef agreed to leave the pool so long as Smith would accompany him to the jail. Smith testified that when they arrived at the cell, Shareef "just went wild. He took the furniture and started throwing the chairs against the wall . . . . [I]t was just as violent as anything [Smith] ha[d] ever seen in [his] life." J.A. 2377.

Smith also testified about Mahdi's court hearing following the standoff at his grandmother's house. Smith recalled that the judge described Mahdi as a "smart" and "nice-looking kid" and recognized that "[h]is problem [was] his father." J.A. 2379. Had anyone from Mahdi's South Carolina defense team contacted him, Smith said he would have testified and "probably would have" asked the trial court to show mercy. J.A. 2378.[15]

[15] Sharon Pond, a mental health therapist from Lawrenceville also testified on Mahdi's behalf, though she had never met him before the evidentiary hearing. She testified about Shareef's treatment for various mental illnesses, but acknowledged that when Shareef was referred to the state hospital after the pool incident, the doctors there did not find any indication of major mental illness. Pond was not contacted by Mahdi's South Carolina defense team.

In addition to the witnesses who testified at the hearing, PCR counsel introduced affidavits from Dora Wynn, Douglas Pond, and Sheriff Woodley. Wynn, Mahdi's kindergarten teacher and elementary school principal, stated that he "often simply refused (Continued)

c. Mental Health Experts

PCR counsel called mental health experts to testify as well, including: Dr. Nicholas Cooper-Lewter, a licensed social worker; Dr. Craig Haney, a social psychologist; Dr. DeRosset Myers, Jr., a clinical psychologist; and Dr. Donna Schwartz-Watts, a psychiatrist. Collectively, they testified about the impact various events in Mahdi's life had on his mental health and diagnoses.

Dr. Cooper-Lewter spoke about incidents where Mahdi witnessed Shareef beating Vera and Nancy, which "sen[t] a very, very unhealthy message about how you solve life's problem and how you [relate to] others." J.A. 2403. To that end, Shareef told Dr. Cooper-Lewter that he "wanted [Mahdi] to be [his] warrior. [Shareef] said [Mahdi] was fearless. He would do things that [Shareef] was afraid to do." J.A. 2429. "They practiced shooting and using knives and moving about in the countryside as if there was an enemy and how

---

to do his work, refused to eat, and would just walk away from school." J.A. 2922. But she "never could figure out why he was so angry" because she "was not aware of other circumstances in his home and life" beyond his mother's absence. J.A. 2922.

Douglas Pond, Lawrenceville's Mayor and former Chief of Police, relayed the incident when Shareef jumped in the Whites-only pool and refused to leave. Sharon Pond testified that Shareef was involuntarily committed after this incident based on an emergency worker's conclusion that he suffered from a mental illness and was imminently dangerous to himself or others.

Sheriff Woodley recalled an incident when Nancy "showed [him] bruises on her legs and thighs and told [him] that [Shareef] had beaten her with the buckle end of a belt while his sons, Saleem and Mikal, [were] watching." J.A. 2925. Ultimately, though, she refused to testify or press charges. Sheriff Woodley also recounted an incident when Shareef "kidnaped [sic] and beat[] his wife after she left him," which the boys witnessed. J.A. 2926. In another incident, Shareef "threw a brick at his sister Kathy through the door of the house" and on another occasion "damaged his sister Loretta's car and put a cinder block through her car windows." J.A. 2926.

Regarding the standoff, Sheriff Woodley stated that Shareef initiated the disturbance because he "had no respect for authority." J.A. 2927.

you could distract people and to do whatever you feel you need to do to the enemy. They were being taught that regularly on a daily basis." J.A. 2429. Dr. Myers testified that he was "struck by the fact that there seemed to have been a good deal of violence in his family of origin" as well as "the fact that there seemed to be a lot of psychopathology there." J.A. 2621–22. Dr. Cooper-Lewter acknowledged, however, that there was no evidence that Mahdi was physically or sexually abused by his father or any other figure in his life.

Regarding Mahdi's suicidal ideations as a child, Dr. Cooper-Lewter referred to an incident where Mahdi "attempt[ed] to kill himself by jumping off of a bridge," J.A. 2411, as well as his diagnosis at the Carter Center with major depression recurrent with suicidal ideation and severe attachment disorder. Nevertheless, Mahdi's records indicated to Dr. Cooper-Lewter that he "only want[ed] to hurt [him]self when [he could not] have [his] way." J.A. 2528. Dr. Haney agreed that there were clear instances when Mahdi expressed suicidality for purposes of manipulation.

Further, Dr. Haney testified that Mahdi's "social history became an institutional history at age 14," after which he "was institutionalized for approximately eight and a half out of every 10 days of his life . . . in juvenile facilities and adult prison facilities." J.A. 2570. And Mahdi's records are "replete with . . . impulsive acting out." J.A. 2574. During Mahdi's time in the DJJ, he was diagnosed with conduct disorder, which "means that you . . . act in ways that are unacceptable, maybe even harmful. In other words, you don't behave properly" and typically do not show remorse. J.A. 2435. At one point, the DJJ had to ban Mahdi from participating in an anger control group, citing an incident where he became "very upset and continually threatened that if he [did] not get released from DJJ

on 9/23/99 he [was] going to fuck people up and go around acting crazy." J.A. 2523. In a separate report, Mahdi stated that if he was not released on time, the DJJ would find him hanging in his cell. They later found him "with a sheet tied around his neck sitting in his cell and they put him on suicide watch." J.A. 2524. Mahdi "reported that he did not really intend to harm himself. He just wanted to go to special housing because he believed he could receive more recreation time there." J.A. 2525.

Dr. Cooper-Lewter testified that when Mahdi returned to the DJJ after the standoff, his personality assessment revealed a "dysphoric emotionally immature adolescent with a conduct disorder." J.A. 2501–02. "He operated in a . . . way as if he was emotionally isolated and mistrustful of the world around him." J.A. 2504. This culminated in "suicidal ideation or suicidal threats and gestures," including an instance when he tried to electrocute himself in his cell. J.A. 2504. Mahdi also "began to act out in destructive ways." J.A. 2506.

Soon after he was released from the DJJ, Mahdi went back into custody after his conviction for stabbing Rivera. Dr. Haney[16] testified that upon entering custody, a VDOC psychologist diagnosed Mahdi "with intermittent explosive disorder and antisocial personality disorder."[17] J.A. 2596. Dr. Myers agreed this was "a justifiable diagnosis at the

[16] Significantly, Dr. Haney cabined his assessment of Mahdi to "what [he] believe[d] that institutionalization did to [Mahdi]," not whether "it had anything to do with the commission of these crimes." J.A. 2604. Dr. Haney knew nothing of the specific facts of Captain Myers' murder and could not testify as to any connection between Mahdi's time in jail and his crimes "because [Dr. Haney did not] know the specifics of those events." J.A. 2605.

[17] Antisocial personality disorder is "a pattern of behavior in which a person disregards the rights of other people, feels entitled to have whatever he wants to, [and] is typically associated with criminal behavior but not necessarily." J.A. 2657.

time." J.A. 2657. Mahdi was sent to Wallens Ridge, an adult super-max facility in Virginia, which Dr. Cooper-Lewter described as an "environment where racial epithets were spoken to the correctional officers, where people were tasered. [Mahdi] was. He speaks of at least 14 or 15 times that he was tasered." J.A. 2510. However, Dr. Cooper-Lewter acknowledged that Mahdi's VDOC records did not reflect any such incidents.

Dr. Schwartz-Watts conducted an independent psychological assessment of Mahdi for purposes of the PCR evidentiary hearing. She diagnosed him with major depression recurrent with psychotic features and remission, reactive attachment disorder of childhood inhibited type, anxiety disorder, paranoid personality disorder, and antisocial personality disorder. She also testified that "he [was] suffering these same diagnoses" when he committed the underlying offenses, J.A. 2669, though she later conceded that "on that day he may not have been depressed at all," J.A. 2694. Dr. Schwartz-Watts further clarified that Mahdi

> did not kill this officer because of PTSD. He did not kill Officer Myers because of his depression. He wasn't irritable. He was at a point in my opinion [that] it's a robbery gone bad. He is at a place. He gets surprised and he kills a person. So, [the diagnoses are] present but in terms of like having a statutory mitigator that they diminished his capacity, I don't see that.

J.A. 2676.

Further, Dr. Schwartz-Watts testified that Mahdi told her "that he was not really suicidal," "denie[d] that he's ever been depressed," "denied that he asked police to kill him," and "repeatedly stated [during his time] in super-max that there is nothing wrong with him." J.A. 2691. She also believed Mahdi "is very intelligent . . . above average in intelligence and very perceptive." J.A. 2693.

2. The State's PCR Evidence

The State called seven members of Mahdi's South Carolina defense team: (1) private investigator James Gordon, Jr.; (2) mitigation investigator Paige Haas; (3) psychiatrist Dr. Thomas Martin; (4) forensic psychologist Dr. Geoffrey McKee; (5) attorney Carl B. Grant; (6) lead trial counsel Walters; and (7) second-chair trial counsel Koger.[18]

a. The Mitigation Investigation Team

Gordon and Haas (collectively, the "Mitigation Investigation Team") testified about their efforts to compile evidence for the sentencing portion of Mahdi's trial. Gordon helped the South Carolina defense team locate members of Mahdi's family and also participated in team meetings. The State asked Gordon about a memorandum from one of those meetings, which included a note from Mahdi's North Carolina mitigation investigator[19] stating that Carson "classified Mahdi as a demon because of all the . . . trouble that he [got] into" and "indicate[d] that there was conflict in their home." J.A. 2706; *accord* J.A. 6642 (admitted copy of the memorandum, stating "[Mahdi's] uncle thought he was a demon and conflicts did occur").[20]

[18] The only team members not called were Aiken and Hammock—both of whom testified at the sentencing hearing—as well as Don Grindt, a retired South Carolina Law Enforcement Division agent hired as a crime-scene investigator.

[19] Mahdi was indicted for Boggs' murder and was represented by an independent North Carolina defense team.

[20] When asked at the PCR hearing if he called Mahdi a "demon," Carson claimed he had no memory of doing so but conceded, "Yea, given his behavior I guess I could have said it." J.A. 2272.

Haas had an active role interviewing potential witnesses.[21] She began her work by meeting with Mahdi, who relayed his background and family history. Haas also submitted requests to each school Mahdi attended, hospitals (specifically seeking his psychiatric records), and correction facilities (including DJJ, VDOC, and SCDC). She testified that she went to the schools that Mahdi had attended and spoke with teachers from Lawrenceville and Baltimore. Haas said that, though there were "[s]ome nice teachers that remember[ed] him," she did not speak with anyone "that spent lots and lots of time with him while he was there." J.A. 2787.

As part of her efforts, Haas created a psychiatric chronology for Mahdi. She also traveled to Lawrenceville, Baltimore, and Philadelphia to meet with Mahdi's family members, once by herself and another time with Hammock. During these visits, Haas met with Nancy, Nathan, Vera, Shareef, and Carson.

Haas believed Nancy "potentially" could have been a good witness, but testified that Nathan was not "helpful at all." J.A. 2777. As for Vera, Haas described her difficulty in establishing a basic rapport with her and her shortcomings as a potential witness:

> The first time I was supposed to be able to talk to her and was unable to because she wouldn't come out of her house. The second time she had agreed to see us but when we got there she said that she was sorry but she had to wash her hair and would not be able to come outside or talk to us—did speak by phone like from the inside of the house to us like on the speaker phone on the cellphone. So we did talk to her by phone outside of her house—you know, her inside of her house and us outside of the house.

J.A. 2768–69.

[21] Haas estimated she had served as a mitigation investigator in approximately thirty to forty capital cases.

Regarding her conversation with Shareef, Haas said that she did not "know what kind of witness he would have been," given that they "spen[t] a lot of time . . . talking a lot about his . . . personal beliefs." J.A. 2773. And Haas relayed that when she asked Carson about the incident that led to Mahdi's involuntary commitment, he said he "still laughs about th[at] today because he feels [Mahdi] was just being manipulative and really wasn't struggling [with suicidality]." J.A. 2774.

Haas also met with Mahdi's North Carolina attorney, Mark Rabil, and mitigation investigator, Janet Holahan. Haas testified that she would have relayed any information "dealing with [any] of the potential witnesses in the case" that she received from Holahan to Mahdi's South Carolina defense team. J.A. 2776.

b. Mahdi's Mental Health Experts

The State called Dr. Martin and Dr. McKee, Mahdi's mental health experts hired by his South Carolina defense team. Both provided a similar account of Mahdi's reason for leaving Virginia for North Carolina at the beginning of his crime spree. According to Dr. Martin, it had "something to do with a murder" and he wanted to "avoid homicide detectives" in Virginia. J.A. 2714. Mahdi told Dr. Martin "that he had murdered . . . in a bad drug deal another individual which he thought had not been discovered—at least that he was perhaps a suspect . . . because he said it was unreported." J.A. 2715.

Mahdi told Dr. McKee a similar story, stating that he "felt that his life was in danger . . . because of a rumor that he . . . had killed this other guy's cousin." J.A. 2751. Mahdi also told Dr. McKee

that he and this other person were going to force another person to make meth

> and . . . that this other person went to rob this person who shot back and . . . that he was just there and not the trigger man, but the man got killed and so apparently there was some sort of homicide that he was at least present for.

J.A. 2751.[22]

Turning to their professional assessments, Dr. Martin determined that Mahdi "had a behavioral problem that led to a lot of failed relationships, interactions that were hostile[,] aggressive, sometimes quite violent in nature, and that he had some depressive issues that were . . . subsequently recurrent due to failure to integrate into society." J.A. 2717. Mahdi was "a loner" who "was essentially becoming a racist militant in his own way." J.A. 2717. "His outlook on life was quite violent. His way of surviving [was] by force. He seemed to have no difficulty talking about killing people if necessary in order to achieve independence." J.A. 2717. Dr. Martin also found Mahdi "didn't seem to have remorse about any of the circumstances that were violent in his past." J.A. 2718. Regarding Mahdi's "recurrent suicidal threats," Dr. Martin found he was "very manipulative," citing Carson's statements that "he [did] this all the time to get his way." J.A. 2718.

Ultimately, Dr. Martin diagnosed Mahdi with antisocial personality disorder and determined he did not "appear to be acting under any influence of any depression at the

[22] At the PCR hearing, Mahdi's counsel who represented him before the trial court conveyed a similar version of this story. Grant testified that Mahdi "was running from an incident that occurred [in Virginia] where he was involved in supposedly in somebody being killed or stabbed." J.A. 2793. Mahdi told Walters that "he was with some other individuals and he wanted to create an artificial drought" by "kill[ing] a number of drug dealers" so that "everyone would have to buy drugs from Mr. Mahdi and his associates." J.A. 2805. According to Walters, "in the process of creating that artificial drought there was an individual that was killed and as a result of that there was an investigation that was going on and in addition to that there were other skirmishes that were going on." J.A. 2805.

time" of Captain Myers' murder. J.A. 2719. Mahdi "described very clearly to [Dr. Martin] what he was feeling and what he was perceiving during this event. There was no talk of feeling depressed, psychotic." J.A. 2720. Rather, Mahdi said he "was justified," stating, "Great leaders or mass murderers, people only understand force." J.A. 2723.

Dr. McKee administered various tests, including a personality assessment screener; the information and orientation questions from the Wechsler Memory Scale, Third Edition; and "a device for measuring short-term . . . memory." J.A. 2752. He also diagnosed Mahdi with antisocial personality disorder. Dr. McKee opined that Mahdi was not suffering from any other mental illness at the time of Captain Myers' murder.

Both Dr. Martin and Dr. McKee relayed their findings and told trial counsel they did not believe their testimony would be helpful for Mahdi's case.

c. Mahdi's Counsel

The State also called the attorneys who represented Mahdi before the trial court.[23] Grant testified about assembling Mahdi's South Carolina defense team,[24] upon which he greatly relied, "trust[ing] professionals who normally [were] very competent in that responsibility," whom he felt obtained "everything that [they] felt [they] needed." J.A. 2794. In describing a motion for a continuance he filed after visiting Mahdi's North Carolina counsel, Grant said that he was "discover[ing] that there was going to be a whole lot more information [related to Mahdi's background and family for mitigation purposes]

[23] Grant was initially appointed as lead counsel, but later had to withdraw after a motorcycle accident. Walters was first appointed as second-chair and became lead counsel after Grant's withdrawal. Koger replaced Walters as second-chair.

[24] Grant had been involved in one death penalty case prior to representing Mahdi.

that [they] would need in order to adequately present Mahdi's case on the case in South Carolina." J.A. 2798. The trial court granted the motion and continued the case from January 2006 to November of that year.

Grant and Walters further testified about the mental health experts they hired to evaluate Mahdi. According to Grant, neither Dr. Martin nor Dr. McKee found anything "that could have been used in the penalty phase." J.A. 2792. To the contrary, Grant recalled "the things that were presented by Dr. McKee actually could have been irritating as far as personality and things that would indicate that maybe we were dealing with . . . somebody who would [not] be painted in a good light in front of a jury." J.A. 2792. Walters provided a similar account, testifying that Dr. Martin and Dr. McKee suggested Mahdi was "fine" and that there was "no insanity defense here, and there [were] no impairments." J.A. 2812. In response, trial counsel took the position that they could not "keep going down this road and [the doctors could not] write this report." J.A. 2812.

Walters and Koger also testified about their interviews with potential witnesses from Mahdi's family. Ultimately, Walters concluded that Mahdi's family members "were unwilling to assist" and "were just simply indifferent about him. They didn't really care." J.A. 2828–30. Specifically, Walters testified:

> [Mahdi's] father refused to participate or his position was sort of standoffish and he didn't want to be involved.[25] His mother made it clear she wasn't going to be involved because she was going to wash her hair, and as far as the other sibling [Saleem] he was serving in the military, and as far as the

[25] According to Koger, Mahdi told trial counsel he did not want his father to participate, and trial counsel agreed "that any type of testimony from his father would not be advantageous to Mr. Mahdi's cause." J.A. 2895–96.

> close family—the aunts—they made it clear, you know, we're through with this.
>
> . . . .
>
> They seemed as if it was a self-fulfilling prophecy that something bad was going to happen to him anyway.
>
> . . . .
>
> My people went in. They did the best they could. They're experts and they are good at what they do. They garnered all of the information they could and they attempted to put forth the best defense for Mr. Mahdi.
>
> . . . .
>
> [W]e wanted an individual that would testify favorably for him and . . . [i]n our search to determine if someone wanted to help Mr. Mahdi, they were standoffish. If you want to find information about someone you start with the family and the family can then relate to you to other people and say maybe these people can assist you. Their position was it started off bad, something bad has happened now, and we knew it was headed this way, and we're not going to jump in an [sic] save him.

J.A. 2837–39.

Walters recalled Nathan as someone who "didn't want to be bothered" and "was proud of the fact that he had identified his nephew for the North Carolina authorities." J.A. 2814. Koger agreed. When asked if Nathan was cooperative with the mitigation team's efforts, Koger responded, "Not at all." J.A. 2892.

Walters described Nancy as "a very proud woman" who "wanted to brag about the accomplishments of the family. She did not want to address the issues with regard to her grandson and how he got there." J.A. 2815–16. Walters determined "this testimony [would not have been] helpful" if all she planned to do was "brag about the accomplishments and

the educational ability of all of [her] children" other than Shareef. J.A. 2816. Koger provided a similar account, testifying that although Nancy was cooperative, she was not helpful:

> She was there every day of the trial, and we talked to her every day after the trial. . . . [A]nd we would speak with her . . ., but she consistently wanted to talk about clearing the family name and we're not these type of people and things of that nature, and really didn't get the point[.]

J.A. 2893.

Walters testified that he also spoke with Carson and Lawanda by telephone, but decided not to call Carson as a witness because

> he laughed after the issue where Mr. Mahdi said he was going to kill himself and that he had been abused, and . . . had a sadistic sense of humor about each event in this child's life as if he was malingering, he was a faker. It was sort of twisted.

J.A. 2819, 2820. Further, Lawanda

> had to severely beat [Mahdi] over and over again. It moved from being chastising the child and whipping the child to a significant beating every day, and, of course, Carson even in the interviews admitted that sometimes he would not stop his wife from doing so because he wanted the united front.

J.A. 2820. "[T]heir position was[,] We're glad he's out of our house. We did the good deed. No one applauded us for it, and now you want us to get involved in attempting to help him in a murder case . . . . [H]e is getting his just desserts." J.A. 2820.

Though trial counsel "wanted someone there that would assist Mr. Mahdi in this process," Nancy was the only one who was present for sentencing. J.A. 2821. Again, though, "[t]he problem with Nancy was [that] she wanted to explain to a Calhoun County jury all of the accolades of the family and how successful they were." J.A. 2821. But trial

counsel did not "need testimony coming in to save the family name." J.A. 2821. They needed "testimony that directly deal[t] with Mikal Mahdi." J.A. 2821.

Trial counsel decided Hammock was their best option to present Mahdi's family history and articulate the issues that occurred in his life, in part, because this would allow them to limit the amount of negative evidence that would have otherwise come in had they called any lay witnesses. The "bigger problem," according to Walters, was the fact that there was a videotape of Mahdi killing Boggs.[26] J.A. 2826. "So [trial counsel] could [have] [m]arch[ed] in 100 family members. . . , [but they] knew this was a disk sitting in everybody's file that would show an execution-style murder . . . that occurred." J.A. 2826. Thus, it was imperative to curb any additional evidence that would have undermined their mitigation strategy.

Finally, when asked why trial counsel did not challenge the constitutionality of judicial sentencing under S.C. Code Ann. § 16-3-20, Walters responded,

> [W]e wanted [the trial court] to sentence him and the reason was sitting judges that have practiced law for an extensive period of time and are also involved in the prosecution and defense of criminal cases they are desensitized and sort of immune when they hear—not to say anything disparaging, but they've seen plenty of murder cases over and over and over again as opposed to a lay person that may see this film. If you've handled murder case after murder case after murder case, you can focus on the issues. You can take in the significance of the murder itself and the other factors and make a rational decision.

J.A. 2883–84.

[26] As noted earlier, the tape was admitted into evidence during the sentencing hearing over Mahdi's objection.

F. The PCR Court's Ruling and Appeals

After deliberating, the PCR court entered an exhaustive opinion denying each of Mahdi's IAC claims. In so doing, it set out the proper standard for reviewing claims under *Strickland* and its progeny, and framed its analysis around the Supreme Court's controlling precedent. This is the opinion we review here, so a detailed summary of that court's findings and conclusions follows.

1. The Jury Sentencing Claim

The PCR court found "no merit" to Mahdi's Jury Sentencing Claim because he failed to "specify the jury sentencing advantages to which he allude[d], []or how counsel inadequately advised him of those advantages." J.A. 7528. At bottom, Mahdi "did not testify, and offered no testimony or other evidence at the merits hearing on this issue." J.A. 7528. Nor did he "question any of his former appointed attorneys" about it. J.A. 7528. As a result, the PCR court determined Mahdi "failed to meet his burden of proof," J.A. 7528, resulting in both his waiver and abandonment of this claim.

Nevertheless, the PCR court concluded in the alternative that the record established "Mahdi was fully advised of his rights to jury sentencing and the pros and cons of having a jury conduct his sentencing verses [sic] a judge determining his sentence." J.A. 7529. Between representations from trial counsel about how they advised Mahdi on this issue and statements from the trial court, the PCR court found that "Mahdi clearly understood his right to have a jury determine his sentence." J.A. 7529. And Mahdi "offered no testimony on this issue and offered no evidence that contradicted counsel's sworn testimony on this issue" at the PCR evidentiary hearing. J.A. 7530. The PCR court found

"counsel's testimony on this issue to be credible" and "supported and corroborated by Mahdi's responses to [the trial court's] questions during the guilty plea itself." J.A. 7530.

According to the court, "[t]here [was] no proof that [trial] counsel was deficient in any manner in this regard." J.A. 7531. But even if they were, the PCR court held that Mahdi could not prove prejudice because there was no "reasonable probability he would not have pled guilty, and would have proceeded to trial with a different outcome," in light of the "record, including counsel's credible testimony, the record of the plea proceeding, and the evidence that would have been submitted to the chosen jury, including the horrendous facts of Myers's murder, the murder of Christopher Boggs in North Carolina, and Mahdi's maladaptive prison behavior and atrocious criminal record," J.A. 7531.

2. The Mitigation Evidence Claim

The PCR court bifurcated its analysis of the Mitigation Evidence Claim into *Strickland*'s familiar two-pronged approach. First, it considered whether trial counsel were deficient in their representation of Mahdi. Though the PCR court found "no merit to these allegations," J.A. 7532, it nevertheless proceeded to the second prong of the analysis and considered whether Mahdi would have been prejudiced had counsel's performance been deficient.

a. Deficient Performance Prong

In the Mitigation Evidence Claim, Mahdi asserted trial counsel were deficient by: (1) failing to call several of Mahdi's extended family members and community members; (2) presenting testimony through Hammock as opposed to Dr. Cooper-Lewter; (3) failing to introduce testimony from an expert like Dr. Haney concerning the effect of Mahdi's life

of incarceration; (4) failing to adequately investigate, develop, and present evidence of Mahdi's mental health history; and (5) failing to introduce various records at the sentencing hearing. The PCR court rejected each of these subclaims on their merits. As discussed below, Mahdi procedurally defaulted all but one aspect of the first subclaim (non-family lay witnesses) because he failed to appeal the dismissal of all the remaining subclaims (2 through 5 above) to the Supreme Court of South Carolina. Therefore, we focus our attention on that portion of the PCR Court's analysis denying Mahdi's first subclaim that trial counsel provided ineffective assistance by failing to call non-family lay witnesses during his sentencing hearing.

The court concluded that "[t]he record supports counsel in this case conducted a reasonable and thorough mitigation investigation and presented what mitigation they could that was favorable to Mahdi at the time of the sentencing proceeding." J.A. 7556. According to the PCR court, counsel's performance could not have been deficient because "much, if not all, of the evidence Mahdi offered at PCR regarding his family and social history, whether through family or community witnesses, was cumulative to the evidence presented in Mahdi's capital sentencing proceeding" through Hammock's testimony and exhibits. J.A. 7560.

In addition, the PCR court cited the "credible evidence at the merits hearing show[ing] counsel retained a qualified mitigation investigator," Haas, who "went to the schools Mahdi attended," "spoke with teachers" who were familiar with him, and compiled a summary of his school records, which were introduced at the sentencing hearing. J.A. 7600–01. The PCR court also cited Hammock's testimony about Mahdi's difficulties in

school, frequent moves, and educational gaps before concluding that trial counsel "conducted a reasonable investigation of Mahdi's school history and presented the same" to the trial court. J.A. 7602.

b. The Prejudice Prong

After reviewing the "overwhelming," aggravating evidence presented at the guilty plea and sentencing hearings, "along with all the evidence in mitigation Mahdi alleges should have been presented"—"along with the aggravating evidence that would have almost certainly come in on cross-examination, rebuttal, or contained within the evidence itself, and the mitigation evidence presented at the sentencing hearing before [the trial court]"—the PCR court found there was "no reasonable probability [the trial court] would have returned with a different sentence." J.A. 7627. Thus, even if trial counsel had been deficient, Mahdi had "failed to prove prejudice." J.A. 7627.

3. The Judicial Sentencing Claim

Turning to Mahdi's final IAC claim, the PCR court dismissed any suggestion that trial counsel were ineffective for failing to assert that S.C. Code Ann. § 16-3-20 is unconstitutional. The South Carolina Supreme Court had rejected that exact argument on several occasions before Mahdi's sentencing. "Therefore, counsel could not have been deficient in failing to preserve an issue that has no merit under law." J.A. 7635.

Moreover, "counsel correctly testified at the PCR hearing" that "Mahdi decided to plead guilty because [he] believed he had a better chance of receiving a life sentence from [the trial court] than from the jury he had selected." J.A. 7636. And the PCR court, having "had the opportunity to view the witnesses and hear their testimony on this issue," found

"trial counsel's testimony on these issues to be credible." J.A. 7636. And "Mahdi offered no testimony to contradict trial counsel's testimony on these issues." J.A. 7636. Thus, the PCR court determined that "Mahdi wanted to be sentenced by [the trial court], not the jury he had initially selected and [e]mpaneled." J.A. 7636. And so, "it would have made no sense for Mahdi to have objected to the constitutionality of the statute and insist on pleading guilty and being sentenced by the jury, and counsel was not ineffective in failing to object to the constitutionality of" S.C. Code Ann. § 16-3-20. J.A. 7636

****

Represented by separate appellate counsel, Mahdi appealed only one aspect of the PCR court's denial of his Mitigation Evidence Claim:

> Was [Mahdi] denied the effective assistance of counsel at his capital sentencing proceeding by trial counsel's decision to rely entirely on a single expert witness to present mitigating evidence about [Mahdi's] background instead of calling available lay witnesses who could have provided detailed and specific testimony in mitigation?

J.A. 7721. In his filings with the South Carolina Supreme Court, Mahdi clarified that he was challenging only the PCR court's ruling "denying his claim that available non-family members, i.e., members of the community, including his former teachers, should have been called as witnesses." J.A. 7822. He did not challenge the remainder of the PCR court's decision, including its rejection of the other subclaims from the Mitigation Evidence Claim. Both that court and the U.S. Supreme Court denied his appeal.

G. The Second State-Court PCR Proceedings and Appeals

Seven years after filing his first PCR application, Mahdi's federal habeas counsel filed a successive one in South Carolina state court. In addition to re-raising the Jury

Sentencing, Mitigation Evidence, and Judicial Sentencing Claims from his first PCR application, Mahdi presented a fourth IAC claim for review:

- The "Guilty Plea" Claim: Trial counsel rendered ineffective assistance because they "advised [Mahdi] that the guilty plea would be considered as mitigation." J.A. 8181.

The State moved to dismiss. The PCR court granted the motion and entered an order denying Mahdi's application because: (1) it was time barred under the one-year South Carolina statute of limitations for PCR actions, S.C. Code Ann. § 17-27-45; (2) it was improperly successive, S.C. Code Ann. § 17-27-90 (the Supreme Court of South Carolina will refuse to consider claims raised in a second appeal that could have been raised at an earlier time); S.C. App. Ct. R. 203(d)(3), 243 (if a prisoner has failed to file a direct appeal or a PCR application and the deadlines for filing have passed, he is barred from proceeding in state court); (3) the State was entitled to judgment as a matter of law based on the pleadings; and (4) the State was entitled to judgment as a matter of law because there was no genuine issue of material fact. Mahdi appealed to the South Carolina and the U.S. Supreme Courts. Both denied his petitions.

H. Mahdi's Emergency Motion in the District Court for Supplemental Expert Funding

After filing a placeholder § 2254 petition, Mahdi's federal habeas counsel submitted an ex parte emergency motion in the district court to amend the expert witness budget, noting that they had "recently discovered evidence related to race-based trauma that [Mahdi] experienced during his childhood that . . . warrant[ed] presentation" as a claim under *Martinez v. Ryan*, 566 U.S. 1 (2012). J.A. 11. Counsel indicated they had contacted Dr. Hope Hill, a Professor at Howard University, who agreed to develop and present this

evidence. The motion asked the district court to authorize $22,500 in fees and $2,500 in travel expenses for her.

The following day, the magistrate judge entered an ex parte text order directing counsel to provide the following relevant information:

> (1) a brief outline of the "recently discovered evidence" related to race-based trauma that [Mahdi] experienced that provides the basis for an additional expert witness; [and] (2) a brief summary of how this information impacts the claims to be raised by [Mahdi] in the Amended Petition.

J.A. App. F, ECF No. 69.

In response to the first query, Mahdi represented that "[t]rial counsel and PCR counsel failed to investigate, in detail, [his] genealogy" because, although "counsel very generally pieced together family biographies, there was no in-depth examination of Mr. Mahdi's lineage." J.A. 29. Federal counsel, however, represented that they had "been able to explore the history of Mr. Mahdi's paternal side of the family," which they discovered "descends directly from the relationship between a slave-owner and a slave."[27] J.A. 29–30. According to Mahdi, "[t]his information is critical, particularly in light of [his] mindset prior to the crimes at issue in this case." J.A. 30. And had trial or PCR counsel been aware of this "slave lineage," it should have "led to an examination of the intersection of race and trauma." J.A. 30.

[27] Mahdi particularly faults his PCR counsel, pointing to a note in a report from Dr. Cooper-Lewter that Mahdi was a descendent of a White homeowner's relationship with the family's Black gardener. Mahdi submits that, "[a]t a minimum, that should have warranted a closer investigation of [his] lineage, which would have revealed [his] slave lineage and led to an examination of the intersection of race and trauma." J.A. 30.

Mahdi pointed to a letter he wrote to Nancy in 2003 expressing "a deep desire and yearning to learn about his ancestry, as he believed that helped define who he was as a person."[28] J.A. 30–31. This was important, according to federal habeas counsel, because Mahdi

> grew up in a home with conflicting dualities about race: His grandmother constantly emphasized the importance of "fitting in" and "passing as white," while his father converted to Islam to shed his "slave name" and repeatedly taught [Mahdi] to rebel against "white society" and indoctrinated [him] in anti-white and anti-establishment propaganda.

J.A. 31. Mahdi's counsel stated that their "aim [was] to continue to explore information about Mr. Mahdi's family history and lineage in order to develop new mitigation themes and evidence that ha[d] not been presented." J.A. 31.

As for how this information would impact his claims, Mahdi submitted that the new evidence could show that race and his family history played some part in his development and subsequent criminal acts. Mahdi's "prior defense teams—both at trial and PCR—did not focus or develop any strong evidence or narrative to address the multiple aspects of trauma that [he] experienced throughout his life." J.A. 31. "While some evidence was presented in PCR about generalized stressors that Mr. Mahdi experienced, PCR counsel completely overlooked the importance that race and Mr. Mahdi's family history played in

---

[28] The letter stated:

> I have gotten to a point in my life when I start to wonder who my ancestors are, trace my roots to see where I come from. I really want to know these things . . . Where does the Burwell lineage come from? I want to know these things, it's sad that I don't know my ancestry. I should know these things. This is somewhat of an important issue to me. Please tell me.

J.A. 31.

his development and subsequent criminal acts." J.A. 31. Dr. Hill, according to counsel, would be able to examine the "impact of these traumatic events and stress factors on Mr. Mahdi in the context of his unique ancestry and extrinsic and intrinsic racial identity," J.A. 31, while also analyzing "the additional impact of the repeated racial 'microaggressions' that Mr. Mahdi experienced from his grandmother, father, community, and other family members," J.A. 32, and how they emboldened his survivalist mentality.

The district court denied the emergency ex parte motion. Noting that "counsel want[ed] to present as much beneficial evidence as possible," the court reiterated its own duty to determine "what [was] reasonably necessary for adequate representation" to warrant funding under 18 U.S.C. § 3599(a)(2). J.A. 39. And here, the district court had already approved "$20,000 in funding for a mitigation investigator (and an additional $2,000 for the mitigation expert's travel expenses) and $12,500 for a social historian." J.A. 40. Mahdi's federal mitigation investigator, Sam Dworkin, had already "compiled a detailed family history, tracing Mr. Mahdi's family back to English settlers who arrived in Virginia in 1648 and set up large plantations." J.A. 30.

To that end, the court specifically found Mahdi's "[c]ounsel ha[d] not set out why the issue of trial counsel's alleged ineffectiveness regarding the failure to present mitigation evidence could not be fully developed through the use of the mitigation investigator and social historian." J.A. 40 (citing *Wright v. Angelone*, 151 F.3d 151, 163 (4th Cir. 1998) ("[A]n expert should be appointed when a substantial question exists over an issue requiring expert testimony for its resolution and the defendant's position cannot be fully developed without professional assistance.")). "While counsel may find it

preferable to present this claim through a psychologist with a specialty in race-based trauma, the court [found] such an expert unnecessary to fully develop the claim of ineffective assistance of counsel in regard to mitigation evidence." J.A. 40.

Mahdi moved to alter or amend, claiming the standard used by the district court was more demanding than the one announced by the Supreme Court's intervening decision in *Ayestas v. Davis*, 138 S. Ct. 1080 (2018). According to Mahdi, "*Ayestas* required [the district court] to [have] provide[d] [him] with necessary resources so he would have [had] a fair opportunity to show why [it] should [have] excuse[d] the procedural bars" as to his claim. J.A. 555.

The district court denied the motion and explained that it had "recited the applicable standard [for funding requests] and focused on whether the requested services were reasonably necessary to adequately represent Mahdi." J.A. 911. After summarizing the *Ayestas* decision—which was decided a year after Mahdi's emergency ex parte motion was denied—the district court rejected Mahdi's contention that it "ha[d] an obligation to authorize funding for experts where a mitigation investigator ha[d] identified a need for expert assistance" as being "directly contradicted by *Ayestas*'s emphasis on the district courts' broad discretion in assessing funding requests." J.A. 911. "Counsel's preferences . . . do not equate to a showing that a reasonable attorney would disregard certain services as sufficiently important or reasonably necessary." J.A. 911.

The district court explained that

> [a] review of Mahdi's original funding request suggests that counsels' mitigation investigator had already gathered all of the pertinent factual information counsel planned to allege [that] trial and PCR counsel should

> have presented and that counsel had already formed reasoned arguments as to why that information was critical to Mahdi's mitigation presentation.

J.A. 912. "Those arguments included the impact of Mahdi's lineage and upbringing on his own racial identity and how the resulting internal conflict may have affected him." J.A. 912. "The court could not discern from counsels' request what additional value a psychological report on this subject would offer and, thus, could not find the requested services reasonably necessary." J.A. 912. Indeed, even in his motion to reconsider, "Mahdi broadly assert[ed] the necessity of the psychologist's services . . . but still fail[ed] to articulate specific reasons why the services were warranted." J.A. 912. Thus, the court reaffirmed its decision to deny the motion.

I. Mahdi's § 2254 Petition for Habeas Corpus

1. Mahdi's Petition

Mahdi's § 2254 petition raised the Jury Sentencing, Mitigation Evidence, Judicial Sentencing, and Guilty Plea Claims. *See Mahdi v. Stirling*, No. 8:16-3911, 2018 WL 4566565 (D.S.C. Sept. 24, 2018).[29] The State moved for summary judgment. Mahdi attached an affidavit from Dworkin, to his response in opposition.[30] Dworkin suggested trial and PCR counsel were ineffective for failing to investigate and present certain evidence in five key areas of Mahdi's life: (1) his history of race-based trauma; (2) alleged physical abuse by his father; (3) his father's mental illness and admissions to instilling

[29] Mahdi raised other claims as well, which we do not address here. We limit this summary to only those claims that received a COA.

[30] As previously noted, the district court granted Mahdi's request for $22,000 in expert funding to hire Dworkin to conduct his investigation.

violence in his children; (4) his attempts to get his life back on track during the summer of 2004; and (5) Nancy's letters to North Carolina counsel suggesting South Carolina trial counsel were not engaging with her.

Regarding race-based trauma, Dworkin stated that federal habeas counsel's investigation "uncovered that African American lineage resulting in [Mahdi's] immediate family line was the product of slave and slave owner." J.A. 367. He claimed this lineage was relevant because "a core component of mitigation" stems from Mahdi's "significant race-based trauma, . . . including knowing who [he] is, where he comes from, and how the experiences of his, and his family's, past directly form mitigating information." J.A. 367.

Concerning allegations of Shareef's physical abuse, Dworkin cited an interview with Nate Burwell, IV ("Nate"), Nathan's son and Mahdi's paternal cousin, who "recall[ed] [Mahdi] and Saleem being beaten by their father as children, saying that he [Nate] 'can hear them screaming still.'" J.A. 371 (alteration in original). He also remembered "Vera needing to abandon her family to avoid the abuse of Shareef." J.A. 371.

Turning to Shareef's mental illness and indoctrination of his sons, Dworkin represented that he had interviewed Mahdi's father and discovered information trial and PCR counsel had failed to uncover. Specifically, Dworkin referred to Shareef's decision to change his name and remove Mahdi from formal schooling as "isolating" events. J.A. 369–70. Shareef also admitted he was "on a more 'Jihadist tip' for a while and imparted those radical lessons to his son," telling Mahdi "that the American Way and society was 'built on killing people and taking shit.'" J.A. 370.

Regarding the brief period during the summer of 2004 immediately following Mahdi's release from VDOC's custody, Dworkin posited that he "was engaged in sincere efforts to re-enter society." J.A. 372. These included a desire to return to school to complete his GED as well as applying for food stamps. According to Dworkin, "[t]hese are steps one does not take if they are truly disengaged from society. . . . These are all solid and concrete examples of a young man trying to integrate and take his second chance seriously." J.A. 373.

Finally, Dworkin suggested trial counsel were "disengaged from the Burwell family, who wanted to be involved." J.A. 373. In support, Dworkin cited a 2005 letter Nancy wrote to Mahdi's North Carolina trial counsel, "relay[ing] that there had been no communication with South Carolina counsel." J.A. 374.

2. The District Court Denies Mahdi's Petition

After reviewing the issues and extensive record (including Dworkin's affidavit), the district court entered a thorough opinion granting the State's motion for summary judgment. On the Jury Sentencing Claim, the court determined Mahdi's assertion that his trial counsel were ineffective for failing to adequately advise him of the advantages of jury sentencing was directly contradicted by the record. Citing the transcripts from the ex parte and guilty plea hearings as well as Walters' testimony from the PCR evidentiary hearing, the district court found "nothing in this evidence to rebut the presumption that trial counsel provided effective representation and adequately advised Mahdi so that he could make a fully-informed decision to plead guilty." *Mahdi*, 2018 WL 4566565, at *45.

Addressing the Mitigation Evidence Claim, the district court concluded Mahdi preserved only one aspect of it for review under § 2254(d)—whether "trial counsel were ineffective in failing to investigate and present mitigating evidence from non-family lay witnesses"—because that was the sole issue he raised on appeal from his first state-court PCR proceeding. *Id.* at *15. After providing a detailed summary of the evidence presented at sentencing, the trial court's judgment, and the evidence presented at the PCR merits hearing, the district court determined the PCR court had properly applied *Strickland* and its progeny—as well as their South Carolina state law equivalents—in holding that Mahdi had not shown trial counsel were deficient. Moreover, the district court found "the PCR court's determination that the PCR evidence was cumulative [was] not unreasonable. While the PCR evidence certainly expanded on and added depth to Ms. Hammock's testimony and the other evidence offered at sentencing, it would not have significantly altered the sentencing profile presented to the" trial court. *Id.* at *30.

The district court determined the remaining aspects of Mahdi's Mitigation Evidence Claim were procedurally barred. In considering Mahdi's arguments to overcome that bar, the court focused its analysis on his assertion that he had established cause and prejudice under *Martinez*. At bottom, Mahdi suggested the district court should excuse his procedural default because his PCR counsel were ineffective for failing to investigate the five claims Dworkin identified in his affidavit.

The district court rejected each of Mahdi's arguments, finding trial and PCR counsel had conducted an adequate investigation and, even if they hadn't, that he was nevertheless not prejudiced by any failure by PCR counsel to present this newly discovered information.

Nor did any of these new points fundamentally alter Mahdi's claims. The district court reasoned that "the evidence in Mr. Dworkin's affidavit was included, to various degrees, in the PCR evidentiary hearing." *Id.* at *38. And "even assuming that counsel were deficient in all the ways Mahdi alleges, after independently reweighing all of the aggravating and mitigating evidence, . . . absent the alleged errors," the district court determined "there is no reasonable probability that [the trial court] would have reached a different sentencing decision and the court remains confident in this case's outcome." *Id.* at *40. Mahdi therefore had not carried his burden to excuse his procedural default.

Turning to the Judicial Sentencing Claim, the district court found South Carolina's capital sentencing procedures did not violate Mahdi's constitutional rights. It summarized that "*Ring* established that when a defendant exercises his right to a jury trial on a capital offense, he is entitled to have a jury determine any aggravating factors necessary to impose a death sentence." *Id.* at *41. But it noted that the Supreme Court of South Carolina had distinguished *Ring* because it "'did not involve jury-trial waivers and [thus] is not implicated when a defendant pleads guilty' under South Carolina's death penalty statute." *Id.* at *42 (quoting *Downs*, 604 S.E. 2d at 380). Thus, it concluded, "trial counsel were not ineffective for failing to raise a meritless claim." *Id.* at *43; *see also id.* at *43 n.40 (observing that "[i]n the two years prior to Mahdi's trial, the Supreme Court of South Carolina decided three cases expressly finding the death penalty statute constitutional and noting *Ring* was not implicated when a capital defendant pled guilty"). Moreover, the court determined that, "[a]long with waiving his right to a jury trial, Mahdi expressly and

voluntarily waived his right to jury sentencing," while also "admit[ing] to the facts of the crime as stated by the [State]." *Id.* at *42.

Finally, regarding the Guilty Plea Claim, the district court found "trial counsel [were] not at fault for Mahdi's alleged misunderstanding that his guilty plea would automatically preclude a death sentence." *Id.* at *45. It observed that, in fact, the record suggests Walters "explicitly informed" Mahdi that "pleading guilty *did not* guarantee a life sentence." *Id.* (emphasis added). Moreover, it concluded trial counsel's advice was not incorrect as the trial court expressly incorporated Mahdi's guilty plea into the penalty phase and considered it as part of his sentence. And the trial court, "[which] was in a unique position to assess these factors, did not refuse to consider Mahdi's guilty plea or penalize him for the timing" since it occurred one day after he was caught with the handcuff key in the courtroom. *Id.* at *46. In the district court's view, the trial court "properly assessed how the plea, in context, reflected Mahdi's character and, in particular, his alleged acceptance of responsibility. This is exactly the type of individualized consideration required in capital sentencing." *Id.* (citing *Lockett v. Ohio*, 438 U.S. 586, 605 (1978) ("Given that the imposition of death by public authority is so profoundly different from all other penalties, we cannot avoid the conclusion that an individualized decision is essential in capital cases.")).

Mahdi filed a timely notice of appeal. This Court has jurisdiction under 28 U.S.C. § 1291 and 28 U.S.C. § 2253(c)(1)(A).

II.

We granted a COA on five issues: (1) whether the district court abused its discretion in denying Mahdi's supplemental expert funding request; (2) the Jury Sentencing Claim; (3) the Mitigation Evidence Claim; (4) the Judicial Sentencing Claim; and (5) the Guilty Plea Claim. We first address Mahdi's funding request before considering his IAC claims.

A. Supplemental Expert Funding Request

Under 18 U.S.C. § 3599, district courts "may authorize" expert funding in capital cases so long as it is "reasonably necessary for the representation of the [petitioner]." *Id.* § 3599(f); *see id.* § 3599(a)(2). The Supreme Court has explained that

> [p]roper application of the "reasonably necessary" standard . . . requires courts to consider [(1)] the potential merit of the claims that the applicant wants to pursue, [(2)] the likelihood that the services will generate useful and admissible evidence, and [(3)] the prospect that the applicant will be able to clear any procedural hurdles standing in the way.

Ayestas, 138 S. Ct. at 1094. Though it may be error for a district court to refuse funding, it is only so in "those cases in which funding stands a *credible chance* of enabling a habeas petitioner to overcome the obstacle of procedural default." *Id.* (emphasis added). To that end, the Supreme Court and "Congress ha[ve] made it clear . . . that district courts have *broad discretion*" in this assessment. *Id.* (emphasis added); *see also id.* (noting that by using the word "may" in § 3599, Congress "made it perfectly clear that determining whether funding is 'reasonably necessary' is a decision as to which district courts enjoy broad discretion"). Thus, we will reverse a district court's denial of a funding request only if we determine it abused that considerable discretion. This is a heavy burden not easily carried.

Mahdi renews his argument that the district court applied an overly demanding legal standard in denying his ex parte emergency motion to amend the expert witness budget to facilitate further investigation into a possible mitigation claim related to race-based trauma. According to Mahdi, the court improperly relied on our decision in *Wright*, which he alleges is "outdated." Opening Br. 53. Had the district court "applied the correct standard, as dictated by *Ayestas*," Mahdi contends, "it would have necessarily found that a 'reasonable attorney would regard the services as sufficiently important.'" Opening Br. 54 (quoting *Ayestas*, 138 S. Ct. at 1093). Indeed, Mahdi suggests "the District court was *required* to provide" him with the requested funds "to demonstrate that he could overcome the procedural default" on his race-based trauma claim. Opening Br. 55 (emphasis added).

We find no merit in Mahdi's argument. Before turning to its substance, however, we observe at the outset that the factual premise upon which it rests is contrary to the record. In his ex parte emergency motion to amend the budget, Mahdi represented that the *only* "recently discovered evidence" warranting further review as a potential *Martinez* claim was that his father was descended from the union between a slave and his owner. J.A. 29. The record, however, refutes Mahdi's claim because it plainly shows that "the history of Mr. Mahdi's paternal side of the family," specifically the fact that he is a direct descendent "from the relationship between a slave-owner and a slave," J.A. 29–30, was expressly presented to the PCR court during the evidentiary hearing, *see* J.A. 2496 (Lawanda testifying that Nancy's ancestor "was the product of a relationship between a slave and an [I]rish woman" and that the "woman was sent to Boston with child and the father of the child disappeared, [meaning he] was never seen again"); J.A. 2959 (Dr.

Cooper-Lewter's social history of Mahdi's family stating that Shareef's "great-grandmother was a white woman from Broadnax, Virginia" who was "impregnated by the family's black gardener who is believed to have been subsequently murdered by her family").

The district court could not have abused its discretion by denying a motion for supplemental funding that, on its face, was premised entirely on "recently discovered evidence" that was already developed and presented to the PCR court. Thus, Mahdi's efforts to expand this *previously* discovered evidence into a *Martinez* claim had little chance of bearing fruit because the PCR court had already heard this same evidence. *See Vandross v. Stirling*, 986 F.3d 442, 450 (4th Cir. 2021) (noting that one of the requirements for invoking *Martinez* is that "it is likely that no state court will hear the prisoner's claim"). The district court was therefore well within its "broad discretion," *Ayestas*, 138 S. Ct. at 1094, in concluding the requested funding was not "reasonably necessary," 18 U.S.C. § 3599(f).

But even looking past this disqualifying defect, as the district court did, and considering the merits of Mahdi's argument, we would reach the same conclusion. We note that the district court did not cite *Ayestas* or expressly set out that case's framework in its initial decision. But it couldn't have, given that the Supreme Court decided *Ayestas* one year *after* the district court entered its order. Nevertheless, the court did consider the exact argument Mahdi now presents when it rejected his motion to alter or amend the decision. In doing so, the district court explained and applied the three-pronged *Ayestas* standard, making clear that it had denied the funding request because: (1) "counsels' mitigation

investigator had already gathered all of the pertinent factual information counsel planned to allege [that] trial and PCR counsel should have presented and that counsel had already formed reasoned arguments as to why that information was critical to Mahdi's mitigation presentation"; and (2) it "could not discern from counsels' request what additional value a psychological report on this subject would offer and, thus, could not find the requested services reasonably necessary." J.A. 912. In other words, under *Ayestas*, the district court determined the services were not "reasonably necessary" because they were cumulative, unlikely to generate additional useful and admissible evidence, and lacked merit. That determination was not an abuse of discretion, and it negates Mahdi's main contention that the court failed to consider his funding request in light of *Ayestas*.

Furthermore, as the district court pointed out in its first denial order, at no point in Mahdi's emergency motion or at any point thereafter did he identify any themes that he intended to pursue through this supplemental funding request or make even a minimal showing that he would be able to overcome the procedural bar to warrant review. Nor did he forecast what Dr. Hill's report would contribute beyond the information his previously approved $34,500 in funding for a mitigation investigator and social historian had already yielded.[31] *See* J.A. 40 ("Counsel has not set out why the issue of trial counsel's alleged ineffectiveness regarding the failure to present mitigation evidence could not be fully

[31] We observe that this appears to be the entirety of what Mahdi asked for in his initial proposed budget. *See* J.A. 11 ("Petitioner previously submitted a budget in this case, which was approved by the Court."). Eventually, Mahdi determined he did not need a social historian. As a result, he did not use the $12,500 allocated for that expert. But he never asked that those funds be reallocated to Dr. Hill. Rather, his ex parte motion sought $25,000 *in addition to* the $34,500 he had already received.

developed through the use of the mitigation investigator and social historian. While counsel may find it preferable to present this claim through a psychologist with a specialty in race-based trauma, the court finds such an expert unnecessary to fully develop the claim of ineffective assistance of counsel in regard to mitigation evidence."). Instead, Mahdi presented what he incorrectly claimed to be a newly discovered fact—that his father was descended from the union between a slave and his owner—of which he had *no knowledge* at the time he committed his crimes. Mahdi offered no context for how this previously presented fact could have played a role in Captain Myers' murder. Nor did he present any compelling argument in his emergency motion justifying the expenditure of $25,000 to convert this latent fact into a *Martinez* claim. What's more, despite the district court's specific ruling in the first denial order, Mahdi wholly failed to address in his motion to alter or amend why Dr. Hill's services were warranted. *See* J.A. 912 ("In the current briefing, Mahdi broadly asserts the necessity of the psychologist's services and conclusively alleges that those services would enable him to establish both prongs of his *Martinez* claim . . . , but [he] still fails to 'articulat[e] specific reasons why the services [were] warranted.'" (citing *Ayestas*, 138 S. Ct. at 1094) (alterations in original)).

The dissent suggests that in reaching this conclusion, we "ignore[] . . . the expertise that mental health clinicians bring to the table." Diss. Op. 116. But we cannot ignore what wasn't presented to the district court or to this Court. In his response to the district court's ex parte text order, Mahdi suggested that Dr. Hill would "be able to examine the impact of [race and his family history] on Mr. Mahdi in the context of his unique ancestry and extrinsic and intrinsic racial identity." J.A. 31. He further suggested that Dr. Hill would

"systemically evaluate how Mr. Mahdi's background, racial identity, and the trauma that he experienced emboldened his 'survivalist' mentality." J.A. 32. Thus, he concludes, Dr. Hill would "tie together cogent and powerful mitigation themes that have not yet been presented in this case." J.A. 33.

But these vague representations were made in the context of Mahdi's initial ex parte motion, which was premised entirely on the "recently discovered evidence" concerning his slave lineage and Dr. Hill's ability to help "develop and present" it. J.A. 11. Again, in his response filing, Mahdi made clear that the "'recently discovered evidence' . . . that provide[d] the *basis for an additional expert witness*" was his assertion that "[t]rial counsel and PCR counsel failed to investigate, in detail, [his] genealogy." J.A. 29 (emphasis added). At no point, despite multiple opportunities and invitations to do so, did Mahdi offer any justification for how yet another mental health professional's assessment of his genealogy would help him "tie together cogent and powerful mitigation themes" for the court to understand his ineffective assistance claim beyond those he was already able to present through Dworkin. J.A. 33. Nor did Mahdi provide even a hint of what those "themes" might have been or how Dr. Hill's assessment would assist in developing them. J.A. 33. Unlike the dissent, we decline to speculate and fill in those gaps for him.

Mahdi has been evaluated by no less than *seven* mental health experts since his arrest for Captain Myers' murder. Dr. Hill would have been at least the eighth. Particularly relevant here, Mahdi's *own* expert witness in the PCR court, Dr. Cooper-Lewter, had already conducted an extensive evaluation of Mahdi's race-based trauma and family history. *See, e.g.*, J.A. 2955 (examining the "Family and Cultural Context" of Mahdi's

upbringing, including Dr. Cooper-Lewter's belief that they were "fragile people who were often overwhelmed by their efforts to find acceptance in society, especially in light of racial and socioeconomic issues"); J.A. 2956 (addressing Shareef's "passionate[]" and "religious[]" lectures "about the 'unfairness' of white people"); J.A. 2957 (summarizing Mahdi's experiences at Wallens Ridge, which he maintains were filled with "racial epithets" and threats of violence, proving "that everything his father taught him was true"); J.A. 2958–65 (providing a detailed social history of Mahdi's family, including the "social limitations and frustrations of the[] cultural and racial relations growing up in the Jim Crow South," his slave lineage, Nancy's efforts for she and her children to "pass for white," and Shareef's intense racial views and animus towards white people); J.A. 2978–80 (discussing Shareef's rantings, home-schooling, and survivalist training to protect his children from "white folks coming to kill them"). And Mahdi never delineated for the district court what Dr. Hill's additional analysis of these topics would "bring to the table," Diss. Op. 116, beyond what Dr. Cooper-Lewter's review had already contributed.

At bottom, Mahdi did not present any meaningful argument beyond his own ipse dixit representations as to why his *supplemental* request for funding—that is, beyond what had already been provided—was "reasonably necessary." We cannot say that the district court abused its discretion by denying Mahdi carte blanche to pursue any theory he wished based on nothing more than his vague request. *See Hartsell*, 127 F.3d at 349 ("[A] defendant does not have the right to public funding for all possibly helpful avenues of investigation or all possibly useful expert services, but only to the level of support required by the Due Process Clause."). And *Ayestas* does not compel a contrary result.

The Fifth Circuit reached the same conclusion in *Jones v. Davis*, 927 F.3d 365 (5th Cir. 2019). There, the petitioner—raising a similar argument to the one Mahdi presents here—asserted that the district court improperly denied his request for investigative funding because it failed to follow the rubric set out in *Ayestas* (which, like here, post-dated the district court's decision). *Id.* at 373–74. The court had denied the petitioner's request because "he had not shown that he was likely to uncover anything beyond what his experts had already addressed." *Id.* at 374. The Fifth Circuit affirmed, holding that "[b]ecause the reasons the district court gave for its ruling remain sound after *Ayestas*, . . . remand [was] unnecessary." *Id.* The same is true here.

Moreover, this Court's decision in *Wright*—upon which the district court relied in rejecting Mahdi's expert funding request—requiring petitioners to present a "substantial question" over an issue to secure funding, 151 F.3d at 163, is a far cry from the Fifth Circuit's practice condemned in *Ayestas*, which required petitioners to demonstrate a "substantial need" for funding by essentially "*prov[ing]* that [they] *will* be able to win relief if given the services [they sought]," 138 S. Ct. at 1094 (second emphasis added). Indeed, *Wright*'s requirement aligns with the second part of the *Ayestas* rubric—i.e., a petitioner must establish that the evidence he seeks to develop is useful and admissible. *See Wright*, 151 F.3d at 163 (noting that "a substantial question" must "exist[] over an issue requiring expert testimony for its resolution and the defendant's position cannot be fully developed without professional assistance" in order to justify the expenditure of funds). In other words, *Wright* stands for the uncontroversial proposition that in order to justify expert funding, a petitioner must show that there is an issue warranting expert review. *Ayestas* did

nothing to undermine that requirement. *See* 138 S. Ct. at 1094 (holding that "the 'reasonably necessary' test requires an assessment of the likely utility of the services requested"). And Mahdi did nothing to satisfy it. *See id.* (approving the requirement that "an applicant must articulate specific reasons why the services are warranted").

The dissent suggests that the district court erred by "impos[ing] a strict necessity requirement" mandating that Mahdi prove "it was impossible to develop his claim without Dr. Hill." Diss. Op. 111–112. There is no basis in the record for that contention. The district court simply required Mahdi to specify why this "recently discovered evidence" concerning his genealogy necessitated the assistance of a psychology expert in addition to those experts for whom funding had already been allocated. And, after being afforded multiple opportunities to do so, Mahdi failed to present any explanation as to why Dr. Hill's assistance was "reasonably necessary" in light of what he had already received. As a result, the district court did not abuse its discretion in denying his request.

The dissent appears to take issue with the district court for applying *any* standard in reviewing Mahdi's supplemental funding request as opposed to the limitless one it proposes. *See* Diss. Op. 111 n.5 (suggesting § 3599 imposes no specificity requirement and grants broad access for petitioners to hire experts without offering any suggestion of what those experts may uncover). To adopt this reading of 18 U.S.C. § 3599 as compelling courts to grant funding requests whenever counsel subjectively deems them necessary would eviscerate any semblance of their discretionary function. The Supreme Court did not establish such a broad construction in *Ayestas*. And we decline to do so here. We therefore affirm the district court's denial of Mahdi's supplemental request for expert funding.

B. The IAC Claims

We turn next to the district court's denial of Mahdi's IAC claims, which we review de novo. *Grueninger v. Dir., Va. Dep't of Corr.*, 813 F.3d 517, 523 (4th Cir. 2016). We first set out the standards guiding that review.

1. Standards of Review

a. AEDPA Deference

Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), federal courts may "entertain" an application for a writ of habeas corpus from an inmate in state custody "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). In doing so, we follow "Congress' prohibition on disturbing state-court judgments . . . absent an error that lies beyond any possibility for fairminded disagreement." *Mays*, 141 S. Ct. at 1146. Thus, § 2254 "is not to be used as a second criminal trial, and federal courts are not to run roughshod over the considered findings and judgments of the state courts that conducted the original trial and heard the initial appeals." *Williams v. Taylor*, 529 U.S. 362, 383 (2000).

To that end, federal courts cannot grant habeas relief under § 2254 unless the state PCR court's decision: (1) "was contrary to" clearly established Supreme Court case law; (2) "involved an unreasonable application" of the same; or (3) "was based on an unreasonable determination of the facts in light of the" record before it. 28 U.S.C. § 2254(d)); *Harrington v. Richter*, 562 U.S. 86, 100 (2011); *Vandross*, 986 F.3d at 449. This standard is "intentionally difficult to meet" to safeguard principles of comity, finality, and federalism. *Woods v. Donald*, 575 U.S. 312, 316 (2015) (per curiam).

A decision is "contrary to" clearly established federal law "if the state court applies a rule different from the governing law set forth in [the Supreme Court's] cases, or if it decides a case differently than [the Supreme Court has] done on a set of materially indistinguishable facts." *Bell v. Cone*, 535 U.S. 685, 694 (2002). Stated differently, the petitioner must show that the state court's decision was "diametrically different, opposite in character or nature, or mutually opposed" to federal law as determined by the Supreme Court. *Vick v. Williams*, 233 F.3d 213, 216 (4th Cir. 2000).

For an "application of federal law" to be "unreasonable," it must be "objectively" so. *Owens v. Stirling*, 967 F.3d 396, 411 (4th Cir. 2020). To qualify, the state court must "correctly identif[y] the governing legal principle from the Supreme Court's decisions but unreasonably appl[y] that principle to the facts of the particular case." *Tyler v. Hooks*, 954 F.3d 159, 166 (4th Cir. 2019). The state court's decision must be "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103.

Finally, determinations of facts are "unreasonable" when they are "sufficiently against the weight of the evidence." *Williams v. Stirling*, 914 F.3d 302, 312 (4th Cir. 2019) (quoting *Winston v. Kelly*, 592 F.3d 535, 554 (4th Cir. 2010)). That said, a "state court's factual determinations are presumed correct, and the petitioner must rebut this presumption by clear and convincing evidence." *Bennett v. Stirling*, 842 F.3d 319, 322 (4th Cir. 2016); *accord* § 2254(e)(1). "We must be especially deferential to the state PCR court's findings on witness credibility, and we will not overturn the court's credibility judgments unless its error is stark and clear." *Elmore v. Ozmint*, 661 F.3d 783, 850 (4th Cir. 2011). Thus, "[a]

state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Burt v. Titlow*, 571 U.S. 12, 18 (2013) (quoting *Wood v. Allen*, 558 U.S. 290, 293 (2010)).

b. Procedural Hurdles

Before we can consider whether relief is available through one of § 2254's three narrow exceptions, however, the petitioner must first demonstrate that he has cleared a series of procedural hurdles. For example, the petitioner must exhaust his state court remedies, 28 U.S.C. § 2254(b)(1)(A), by "present[ing] his claim to the state's highest court," *Matthews v. Evatt*, 105 F.3d 907, 911 (4th Cir. 1997), *abrogated on other grounds by United States v. Barnette*, 644 F.3d 192 (4th Cir. 2011), including "both the operative facts and the controlling legal principles associated with each claim," *Longworth v. Ozmint*, 377 F.3d 437, 448 (4th Cir. 2004).

"A distinct but related limit on the scope of federal habeas review is the doctrine of procedural default"—often referred to as a procedural bar—one example of which occurs "when a habeas petitioner fails to exhaust available state remedies and the court to which [he] would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred." *Breard v. Pruett*, 134 F.3d 615, 619 (4th Cir. 1998); *see also Reed v. Ross*, 468 U.S. 1, 11 (1984) (stating that a petitioner's failure to abide by a state court's procedural rules for presenting claims in state court results in a procedural default of those claims in federal court absent "cause and actual prejudice"). In addition, procedural default occurs when "a state court clearly and expressly bases its dismissal of a habeas petitioner's claim on a state procedural rule, and that procedural rule

provides an independent and adequate ground for the dismissal." *Breard*, 134 F.3d at 619. Relevant here, a claim is procedurally barred if the petitioner "fail[s] to raise [it] in his petition for certiorari to the South Carolina Supreme Court for review of the State PCR Court's decision." *Longworth*, 377 F.3d at 447.

Petitioners may nevertheless overcome this bar in limited circumstances by "demonstrat[ing] cause for the default and actual prejudice." *Sigmon v. Stirling*, 956 F.3d 183, 198 (4th Cir. 2020) (quoting *Coleman v. Thompson*, 501 U.S. 722, 750 (1991)).[32] To establish "cause," the petitioner must show "'that some objective factor external to the defense impeded counsel's efforts' to raise the claim in state court at the appropriate time," *Breard*, 134 F.3d at 620 (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)), or that "the factual or legal basis for the claim was not reasonably available . . . at the time of the state proceeding," *Roach v. Angelone*, 176 F.3d 210, 222 (4th Cir. 1999). "An attorney error does not qualify as 'cause' . . . unless [it] amounted to constitutionally ineffective assistance of counsel." *Davila v. Davis*, 137 S. Ct. 2058, 2062 (2017). Generally, "[b]ecause a prisoner does not have a constitutional right to counsel in state postconviction proceedings, ineffective assistance in those proceedings does not qualify." *Id.*

A narrow exception exists under the Supreme Court's decision in *Martinez* "when (1) the state PCR court is the first occasion for raising the claim," which is the case in South

[32] Petitioners may also overcome the procedural bar if they can establish that a "fundamental miscarriage of justice would result from" the federal court's failure to consider their claim. *Farabee v. Clarke*, 967 F.3d 380, 395 (4th Cir. 2020). To do so, the petitioners must demonstrate they are actually innocent, which requires "factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998). Mahdi makes no such argument here.

Carolina; "(2) the petitioner's counsel provided ineffective assistance in the PCR court"; and "(3) it is likely that no state court will hear the prisoner's claim." *Vandross*, 986 F.3d at 450. Thus, a petitioner

> satisfies *Martinez* by showing, *first*, that initial postconviction counsel performed deficiently, under the first prong of *Strickland*, by failing to exhaust the underlying ineffective-assistance-of-trial-counsel claim, but not that said counsel's deficient performance was prejudicial, under the second prong of *Strickland*; and *second*, that the underlying claim is substantial, or has some merit, with respect to both prongs of *Strickland*.

Owens, 967 F.3d at 423. To be clear, the Supreme Court created this narrow exception to be applicable only to allegations of IAC by PCR counsel. It does *not* apply to claims of IAC by PCR appellate counsel. *See Johnson v. Warden of Broad River Corr. Inst.*, No. 12-7270, 2013 WL 856731, at *1 (4th Cir. 2013) (unpublished) (per curiam) ("Accordingly, because Johnson alleges only ineffective assistance of *appellate* postconviction counsel, his allegations do not constitute cause for his failure to exhaust under the limited exception in *Martinez*.").

c. IAC

To establish IAC, a petitioner must prove: (1) his counsel was deficient in his representation; and (2) he was prejudiced as a result. *Strickland*, 466 U.S at 687. For the first prong, the petitioner must show that "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. Stated differently, "[t]he challenger's burden is to show that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Harrington*, 562 U.S. at 104. To satisfy the second prong, a petitioner must show that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. In the context of a guilty plea, the petitioner has to show that "there is a reasonable probability that, but for counsel's errors, [he] would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

We are ever mindful that "[j]udicial scrutiny of counsel's performance must be highly deferential," and "court[s] must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. And when we apply *Strickland* and § 2254's highly deferential standards "in tandem, [our] review is doubly so." *Harrington*, 562 U.S. at 105.

As the Supreme Court directs, we only discern "whether the state court's application of the *Strickland* standard was unreasonable. This is different from asking whether defense counsel's performance fell below *Strickland*'s standard." *Id.* at 101. The critical question thus is not whether we or the district court can see a "substantial . . . likelihood of a different result" had counsel taken a different approach. *Cullen*, 563 U.S. at 189. Rather, "[a]ll that matter[s] [is] whether the [*South Carolina*] *court*, notwithstanding its substantial 'latitude to reasonably determine that a defendant has not [shown prejudice],' still managed to blunder so badly that every fairminded jurist would disagree." *Mays*, 141 S. Ct. at 1149 (final alteration in original) (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)). That is a very high bar.

****

Having set out the relevant standards of review, we now turn to Mahdi's claims.

2. The Jury Sentencing Claim

In Mahdi's first IAC claim, he contends the PCR court erred in finding trial counsel were not ineffective for purportedly failing to explain the general proposition that "jury sentencing may actually result in a life sentence, while on the same facts and arguments judge sentencing may result in a death sentence." Opening Br. 76. He maintains the district court's conclusion that this claim was "directly contradicted by the record" improperly interpreted the facts in a "light most favorable to" the State rather than to him as the non-moving party. *See id.* According to Mahdi, "[a] description of 'pluses and minuses' does not show that [he] was made aware by his trial counsel that [the trial court's] sentencing could," in theory, "be more likely to result in a death sentence than a jury's sentencing." Opening Br. 77. Nor, Mahdi alleges, does the fact that he understood "how a jury . . . sentencing would proceed" necessarily show that he knew how a judge sentencing would proceed. J.A. 537.[33] We find Mahdi's argument without merit.[34]

[33] Mahdi also challenges the district court's rejection of his argument that trial counsel were ineffective because "they had not obtained a guarantee that the judge would not impose a death sentence" before advising him to plead guilty. Reply Br. 15–16; *Mahdi*, 2018 WL 4566565, at *45. Because Mahdi raised this argument for the first time in his reply brief, it is waived, and we do not consider it. *Metro. Reg'l Info. Sys., Inc. v. Am. Home Realty Network, Inc.*, 722 F.3d 591, 602 n.13 (4th Cir. 2013).

[34] The district court reached the merits of the Jury Sentencing Claim without addressing whether it was procedurally barred. *See Mahdi*, 2018 WL 4566565, at *44 n.42. As previously noted, Mahdi did not appeal the PCR court's rejection of this claim in his first PCR proceeding. And the Supreme Court of South Carolina rejected the Jury Sentencing Claim on procedural grounds during the second proceeding. As such, the claim is procedurally barred. *See Longworth*, 377 F.3d at 447. However, because the Parties did not brief this issue and the procedural bar is not jurisdictional, *see* 28 U.S.C. § 2254(b)(2); *Lambrix v. Singletary*, 520 U.S. 518, 523 (1997), we too will sidestep that analysis for this claim and address the district court's judgment on the merits.

As a threshold matter, neither the Parties nor the district court address the PCR court's factual finding that Mahdi waived and abandoned the Jury Sentencing Claim by failing to "specify the jury sentencing advantages to which he allude[d]," "testify," "offer[] . . . testimony or other evidence," or "question any of his former appointed attorneys on this issue" at the PCR evidentiary hearing. J.A. 7528. And Mahdi has pointed to no record evidence or presented any colorable argument in his briefs before this Court suggesting this aspect of the PCR court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law" or "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d); *see also Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue." (cleaned up)). Moreover, Mahdi has failed to submit any evidence—"clear and convincing," *Bennett*, 842 F.3d at 322, or otherwise—to overcome the presumption that the PCR court's factual determination regarding his waiver is correct. Thus, we affirm the district court's denial of Mahdi's Jury Sentencing Claim on this independent ground. *See Scott v. United States*, 328 F.3d 132, 137 (4th Cir. 2003) (reiterating that the Court is "entitled to affirm on any ground appearing in the record").

Even if we were to reach the merits of Mahdi's argument, we find no flaw in the district court's conclusion that the record establishes he was fully advised of his rights to a jury trial and sentencing, as well as the possibility that a jury could sentence him to life. Specifically, before pleading guilty, trial counsel "discussed with [Mahdi the] options that

[were] available with regards to this case" and observed that he was "aware of the fact that there are two phases to a trial, the guilt phase and also the sentencing phase." J.A. 1178. Trial counsel told Mahdi "that there [were] no guarantees with regards to either process" and that "there [were] certain pluses and minuses with [a] jury." J.A. 1179. Trial counsel further

> explained to [Mahdi] his constitutional rights, including the right to have a jury trial and the rights to have the jury determine whether his sentence would be life without the possibility of parole, if he were to be found guilty during the guilt phase of the trial, or the jury could return a verdict for death.

J.A. 1193.

Before accepting Mahdi's plea, the trial court emphasized that "in order for a jury to find [him] guilty, all 12 jurors must unanimously agree" and "in order for a jury to recommend a death sentence, . . . all 12 jurors must agree to recommend the death sentence." J.A. 1197. The trial court also explained that "sentencing is conducted by the Judge in any capital case where a defendant pleads guilty." J.A. 1184. Mahdi indicated that he understood he had "the constitutional right to have the jury decide [his] guilt or innocence and, also . . . the constitutional right to have the jury determine [his] sentence." J.A. 1197. And he testified that trial counsel had "made [him] fully aware of" "the constitutional safeguards that [he had] and the essential protections inherent in a jury trial." J.A. 1200. To that end, Dr. Cross confirmed Mahdi's understanding of both judicial and jury sentencing, as well as "the possible consequences for each," before he pleaded guilty. J.A. 1189.

On this record, there is simply no basis to conclude trial counsel's performance was

deficient in this regard. And there is even less ground for finding the PCR court's determination was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement," *Harrington*, 562 U.S. at 103, or "sufficiently against the weight of the evidence," *Williams*, 914 F.3d at 312. Accordingly, we cannot say that the PCR court's rejection of Mahdi's Jury Sentencing Claim was unreasonable.

And even if trial counsel were somehow deficient in this regard, the PCR court's determination that Mahdi could not demonstrate prejudice was reasonable. As the PCR Court observed, there is nothing in the record to suggest that Mahdi "would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59. To the contrary, trial counsel made clear during the PCR hearing that the defense "wanted [the trial court] to sentence" Mahdi because "sitting judges that have practiced law for an extensive period of time and are also involved in the prosecution and defense of criminal cases . . . are desensitized," having "seen plenty of murder cases over and over and over again as opposed to a lay person." J.A. 2883–84. And the PCR court found trial counsel's "testimony on this issue to be credible." J.A. 7530. Mahdi has presented no argument suggesting this determination amounted to an error that is both "stark and clear." *Elmore*, 661 F.3d at 849. As such, we must be "especially deferential" to it. *Id.*

What's more, trial counsel's testimony regarding Mahdi's desire to proceed before the judge for sentencing is especially convincing given the facts of this case. The aggravating evidence was simply overwhelming. First, there were the grisly details about the events leading up to Captain Myers' murder, including the surveillance video capturing

Mahdi's execution-style murder of Boggs[35] and Pitts' testimony recounting the violent carjacking. Trial counsel also had to consider the horrid facts surrounding Captain Myers' murder itself, including Officer Curtis' description of the scene, Ross' summary of her autopsy report and the state of Captain Myers' body, as well as the numerous friends and family members' testimony about the impact Captain Myers' murder had on their lives. Further, trial counsel knew they had to contend with the events surrounding Mahdi's arrest, especially Sergeant Frost's testimony recalling Mahdi's statement that the only reason he did not fire the assault rifle was because the gun's "selector was stuck on a three shot and [he did not] think [he] could have . . . shot [Sergeant Frost], the other cop, and . . . that fucking dog." J.A. 1243.

Trial counsel were also faced with overwhelmingly negative evidence concerning Mahdi's atrocious criminal record and maladaptive behavior while in custody. This included Mahdi's repeated statements showing his utter disregard for human life. *See, e.g.*, J.A. 1280 (telling officers after the standoff that he was "going to kill a cop before [he] die[s]"); J.A. 1310 (apprising officers after fighting them that "he should have killed" his mother); J.A. 1363 (informing his neighbor that he "was going to knock [someone] off"); J.A. 1465 (stating that he would kill an SCDC officer "the next chance he [got]"); J.A. 1482, 1497 (threatening to murder Officer Driggers); J.A. 1978 (threatening to "become

[35] The district court granted Mahdi's motion in limine to exclude the video of Boggs' murder from being shown to the jury during trial. Nevertheless, the trial court allowed the tape to be admitted into evidence over Mahdi's objection during sentencing. There is no reason to believe—and Mahdi has presented none—that the trial court would have refused to admit the tape had the sentencing been conducted by a jury.

homicidal" while in DJJ custody). This evidence also included other violent conduct, including his participation in the standoff with his father, fighting with police officers, stabbing Rivera, and repeated disciplinary infractions while in custody. Finally, there was significant evidence concerning his efforts to escape from law enforcement and confinement, including his comments to Coulson, testimony from SCDC Officers Prioleau and Lane, as well as the fact that he had been caught smuggling a homemade handcuff key into the courthouse during the opening days of trial.

At bottom, the aggravating evidence overwhelmingly supports the PCR court's conclusion there was no "reasonable probability he would not have pled guilty, and would have proceeded to trial," in light of the "record, including counsel's credible testimony, the record of the plea proceeding, and the evidence that would have been submitted to the chosen jury." J.A. 7531. Thus, we conclude the PCR court's application of *Strickland* was reasonable, *see Harrington*, 562 U.S. at 101, and the district court properly denied Mahdi's § 2254 petition on this ground.

3. The Mitigation Evidence Claim

Mahdi argues the district court erred in denying relief on his Mitigation Evidence Claim for two reasons. First, he alleges the court "improperly concluded that [he] procedurally defaulted on all but one of his mitigation [sub]claims"—that trial counsel were deficient for failing to call non-family lay witnesses to testify on his behalf. Opening Br. 56. Second, Mahdi maintains the court erred in finding the PCR court's rejection of his non-procedurally barred subclaim concerning non-family lay witnesses was an objectively reasonable application of *Strickland*. We address each argument in turn.

a. Procedurally Barred Claims

Mahdi submits he can overcome the procedural bar on his defaulted subclaims by demonstrating PCR counsel's alleged failure to uncover evidence obtained by federal habeas counsel. Though he raised six theories to overcome this hurdle before the district court, he only presses two here: (1) that he can establish cause and prejudice under *Martinez*; and (2) that the newly discovered evidence set out in Dworkin's affidavit fundamentally alters his Mitigation Evidence Claim.[36] Neither argument holds water.

i. *Martinez* Cause and Prejudice

Mahdi asserts that federal habeas counsel's investigation revealed substantial mitigation information that bolstered both his Mitigation Evidence Claim and rebutted the State's evidence in aggravation. Specifically, he argues that had PCR counsel presented the five areas of newly discovered evidence set out in Dworkin's affidavit, "there is at least a reasonable probability that the outcome of the PCR proceeding would have been different." Opening Br. 58.

The State responds that Mahdi cannot rely on *Martinez* to excuse the procedural default because the narrow exception that decision created applies only to allegations of IAC by PCR counsel, not PCR *appellate* counsel. In *Martinez*, the Supreme Court specifically limited its narrow application to first-level collateral review actions, reiterating

[36] Though Mahdi sets out the other four theories in a footnote in his opening brief, *see* Opening Br. 57 n.14, we conclude he has waived any challenges to the district court's rejection of them. *See Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 607 (4th Cir. 2009) (holding that an issue raised in a footnote and addressed with only a single declarative sentence asserting error is waived); *see also Foster v. Univ. of Md.-E. Shore*, 787 F.3d 243, 250 n.8 (4th Cir. 2015) (same for footnotes with argument).

that the new exception "does not concern attorney errors in other kinds of proceedings, including appeals from initial-review collateral proceedings." 566 U.S. at 16. Thus, the State maintains, the fact that Mahdi has discovered additional background evidence during the federal habeas proceedings has no bearing on the analysis for whether his procedurally barred subclaims are defaulted.

The State has the better argument. As discussed, Mahdi did not appeal the PCR court's rejection of any aspect of the Mitigation Evidence Claim in the first proceeding apart from the denial of his subclaim that trial counsel were ineffective for failing to call non-family members as witnesses. And when Mahdi tried to bring up the remaining facets of the Mitigation Evidence Claim during the second state-court PCR proceeding, the Supreme Court of South Carolina rejected all of them on procedural grounds. Therefore, the subclaims are procedurally barred. *See Longworth*, 377 F.3d at 447.

The burden now falls on Mahdi to "demonstrate cause for the default and actual prejudice." *Sigmon*, 956 F.3d at 198 (quoting *Coleman*, 501 U.S. at 750). He fails at the first step. There is no dispute that the "cause" for Mahdi's procedurally defaulted subclaims was PCR appellate counsel's failure to appeal their denial to the Supreme Court of South Carolina. But "ineffective assistance of *appellate* postconviction counsel . . . do[es] not constitute cause for his failure to exhaust under the limited exception in *Martinez*." *Johnson*, 2013 WL 856731, at *1. Therefore, we affirm the district court's determination

that Mahdi cannot overcome the procedural bar through *Martinez* for his defaulted subclaims.[37]

ii. Fundamentally Altered Claims

In another attempt to resurrect his procedurally defaulted subclaims, Mahdi contends Dworkin's newly discovered evidence "fundamentally altered" his Mitigation Evidence Claim because PCR counsel "offered no evidence to support claims of race-based trauma or the extent of Shareef's abuse." Opening Br. 60. Mahdi maintains "the new evidence places [his claim] in a significantly different and stronger posture than it was before the state courts," thereby excusing the default. Reply Br. 9.

The State responds that Mahdi did present the substance of his claim to the state courts, pointing to the principle that "the presentation of additional facts does not mean that the claim was not fairly presented." Br. 36 (quoting *Moore v. Stirling*, 952 F.3d 174, 183 (4th Cir. 2020)). From this, it concludes "Mahdi's claim is decidedly one of background information," *Id.* at 37, that may have "strengthened [his] claim that trial counsel should have done more" but does not "fundamentally alter" it, *id.* (quoting *Moore*, 952 F.3d at 185).

We agree with the State. New evidence in a federal habeas matter fundamentally alters a claim in the limited situation where the petitioner did not offer *any* evidence to the state courts supporting the existence of a material fact. *See Winston v. Kelly*, 592 F.3d 535,

[37] To the extent Mahdi is trying to raise the issues presented in Dworkin's affidavit as separate *Martinez* claims—and not as a means to overcome the otherwise procedurally defaulted subclaims raised in his first PCR petition—we affirm the district court's rejection of them for the reasons stated in its opinion. *See Mahdi*, 2018 WL 4566565, at *34–38.

550 (4th Cir. 2010) ("Suppose, for example, that a petitioner on federal habeas introduces new evidence to establish the existence of fact X, a fact required to prove his claim. The claim will inevitably be stronger, regardless of the evidence the petitioner presented to the state courts. However, if the petitioner presented *no evidence* to the state courts to establish the existence of fact X, the claim will be fundamentally altered by the new evidence presented to the district court."). "This standard is not satisfied with new bits of evidence but requires critical evidence that makes his claim both stronger *and* significantly different." *Moore*, 952 F.3d at 183 n.8.

At most, Dworkin's newly discovered evidence consists of additional information relating to Mahdi's troubled history and his grandmother's interactions with trial counsel. And, as the State rightly observes, Mahdi presented voluminous evidence at both sentencing and during his first state-court PCR proceeding regarding his background and trial counsel's mitigation efforts. Though this newly discovered evidence "has perhaps strengthened [Mahdi's] claim, . . . it has not 'fundamentally altered' it." *Gray v. Zook*, 806 F.3d 783, 799 (4th Cir. 2015). "The heart of the claim remains the same: his trial attorneys should have done more to show how [Mahdi's troubled childhood] lessened his culpability." *Id.*; *see Moore*, 952 F.3d at 183 ("When new evidence only elaborates on the evidence presented in state court, the claim is not fundamentally altered into a new, and unexhausted, claim."). As such, the district court was correct in rejecting Mahdi's efforts to overcome the procedural bar through this avenue as well.

The dissent disagrees, indicating instead that it would vacate the district court's grant of summary judgment on both subclaims and remand for further proceedings. As for

Mahdi's race-based-trauma subclaim, the dissent posits that "[h]ad the district court applied the correct legal standard" to Mahdi's supplemental funding request, Diss. Op. 120, it would have "granted funding to retain Dr. Hill," *id.*, which, in turn, would have supplemented Dworkin's affidavit and, when taken together, would have presented "a compelling argument that his race-based trauma subclaim was 'new,' and that *Martinez* excused the procedural default," *id.* As previously noted, the dissent is simply incorrect at the first step of its speculative journey. We do agree, however, that "[w]e don't know what we don't know," Diss. Op. 121, and thus decline to conjecture about what could have been presented, if anything, had Mahdi answered the district court's repeated inquiries.

Turning to the abuse subclaim, the dissent relies entirely on Nate's allegedly "substantial insight into the family dynamics,"[38] as contained in a single sentence in Dworkin's ten-page affidavit. J.A. 371; *see also* Diss. Op. 122. Specifically, the dissent focuses on Nate's claim that he can "recall[] [Mahdi] and Saleem being beaten by their father as children, saying that he [Nate] 'can hear them screaming still.'" J.A. 371 (alteration in original). That is the *sole reference* in the approximately 8,800-page record suggesting that Shareef physically abused Mahdi. In toto. Full stop. The dissent concedes as much. Diss. Op. 123 ("In fact, *all evidence* was to the contrary [i.e. that Shareef had not abused Mahdi]." (emphasis added)). And despite the fact that Nate provided no details as to the time period, frequency, or severity of the alleged abuse, the dissent nevertheless

[38] The record provides no context for this assertion. There is no way of knowing what relationship, if any, Mahdi had with his cousin Nate. At most, we know Nate's father, Nathan, had been unhelpful during the initial mitigation investigation and was proud of having identified Mahdi for the authorities.

characterizes the alleged abuse as "severe," Diss. Op. 123, and "extreme," *id.* at 123, 130 n.14, while also referring to it as "profound and chronic trauma," *id.* at 130 n.14. This portrayal has *no* basis in the record.

Even accepting Nate's statement, we could just as easily speculate that Nate was referring to a single incident when Shareef spanked Mahdi and his brother. That statement would have as much support in the record as the dissent's characterizations. Nothing in the record gives any context to Nate's isolated claim. We simply do not see how Nate's vague, unsupported, and unqualified allegation places Mahdi's "case in a *significantly different and stronger evidentiary posture* than it was when the state courts considered it." *Wise v. Warden, Md. Penitentiary*, 839 F.2d 1030, 1033 (4th Cir. 1988).

Nor do we "view[] the strength of childhood-abuse evidence as mitigating evidence much differently than the Supreme Court, the South Carolina trial court, the State's trial counsel, and the State's PCR counsel, among others—[the dissent] included." Diss. Op. 124 (footnotes omitted). The fact of this case is that there is *no* evidence of childhood abuse for us to give credence to. We will not diminish the strength of factually supported claims of childhood abuse by sensationalizing the unsupported allegation here, which is contrary to a massive record disproving any such speculation.

To that end, we also will not fault trial or PCR counsel for failing to elicit this claim. The record does not support the dissent's suggestion that Trial Counsel undertook little or no effort "to find favorable mitigation evidence once they grew frustrated with those who knew Mahdi best." Diss. Op. 129. Nor is there any record support for the dissent's assertion that "trial counsel decided that Mahdi had not been abused as a child because both the

abuser and the abused denied it." Diss. Op. 128.[39] In actuality, to the extent trial counsel reached the conclusion that Shareef had not abused Mahdi, they did so after multiple interviews of family members, teachers, community members, and the review of reams of Mahdi's medical, school, and court records. None of these raised even a scintilla of physical abuse, much less that Nate was a witness to anything. And Dr. Cooper-Lewter, one of Mahdi's expert witnesses during the PCR hearing, reached the same answer after conducting an extensive investigation. *See* J.A. 2953–54 (detailing each of the records he reviewed and the family members and teachers he interviewed); J.A. 2541–42 (testifying that there was "no evidence in this case" of "physical violence from his father").

b. Non-Family Lay Witnesses

Turning to the only non-procedurally barred subclaim, Mahdi maintains that trial counsel's performance was deficient because, "[e]ven though [his] family, friends and community members were available, trial counsel did not present a single witness who personally knew [him] or who could properly bring to light the trauma [he] endured throughout his childhood." Opening Br. 62. And though Mahdi acknowledges that

[39] In any event, we must consider PCR counsel's actions in light of the fact that Mahdi never provided any information suggesting Shareef physically abused him. *See Strickland*, 466 U.S. at 691 ("Counsel's actions are usually based, quite properly, . . . on information supplied by the defendant . . . . And when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable."); *DeCastro v. Branker*, 642 F.3d 442, 456 (4th Cir. 2011) ("[T]he state court did not act unreasonably in refusing Petitioner's attempt ot upend his conviction and sentence based on the information that he failed to timely provide to counsel.").

Hammock's testimony presented some of the troubled details of his life, he asserts "it was woefully deficient." Opening Br. 62–63.

The State suggests Mahdi's argument "cannot be squared with the record." Resp. Br. 33. Reiterating the PCR court's determination "that trial counsel made reasonable investigation into Mahdi's background," Resp. Br. 29, the State emphasizes Hammock's credentials and testimony related to the effect Mahdi's "educational, parental, and role model issues, and other recognized risk factors . . . had on his development." Resp. Br. 33–34. Moreover, the State argues, the district court correctly found the PCR court's decision that the evidence presented by non-family lay witnesses during the PCR evidentiary hearing was cumulative of that presented during the sentencing hearing was reasonable.

We agree that trial counsel's performance was not deficient. As a threshold matter, Mahdi has presented no grounds to conclude that the PCR court's determination that trial counsel "conducted a reasonable and thorough mitigation investigation and presented what mitigation they could that was favorable to Mahdi at the time of the sentencing proceeding," J.A. 7556, was "sufficiently against the weight of the evidence," *Williams*, 914 F.3d at 312.

As Mahdi's South Carolina defense team's testimony—which the PCR court found to be credible, *see Elmore*, 661 F.3d at 849 (reiterating that a state PCR court's findings on witness credibility" will not be overturned unless its error is "stark and clear")—made clear, the mitigation investigation was far from inadequate. To begin, trial counsel hired Haas, a highly credentialled mitigation investigator, who testified that she met with Mahdi and obtained records from each school Mahdi attended, hospitals (specifically seeking his

psychiatric records), and correction facilities (including DJJ, VDOC, and SCDC). She also visited his schools and spoke with several teachers who knew and remembered Mahdi but had not spent significant amounts of time with him. Haas also met with Mahdi's North Carolina mitigation investigator, and relayed information "dealing with [any] of the potential witnesses in the case" to the South Carolina defense team. J.A. 2776. In addition, trial counsel hired Hammock, a highly qualified social worker with an extensive background in death-penalty litigation. Along with speaking to various members of Mahdi's family, Hammock testified that she met with a member of the community who "didn't know much about him" as part of her efforts to "tak[e] information from anyone who would give information about [Mahdi], his life and his development." J.A. 1595. However, as the record makes clear, Haas' and Hammock's work bore little fruit in terms of soliciting non-family lay witnesses to testify on Mahdi's behalf. Indeed, according to trial counsel, they "relied on [Mahdi's] family to identify other potential witnesses," but they were "not helpful." *Mahdi*, 2018 WL 4566565, at *32.

Not only were Mahdi's family members unhelpful in this regard, the PCR court also made a credibility determination that they too were unwilling to serve as witnesses or assist trial counsel. *See* J.A. 7556 ("This Court finds the testimony of counsel and their defense team on [the Mitigation Evidence Claim] *to be credible* and the present testimony of Mahdi's witnesses regarding their previous willingness to testify *to be not credible*."); *Elmore*, 661 F.3d at 849 (reiterating that state PCR court's credibility findings are not overturned absent a "stark and clear" error in judgment). Mahdi has not challenged that assessment.

But even if Mahdi's family members had testified during sentencing, the evidence adduced during the PCR merits hearing makes clear that they would have undermined his key mitigation arguments. For example, Carson and Lawanda testified about Mahdi's manipulative behavior, including his frequent malingering about suicide and the incident when he made a false claim of abuse in an effort to retaliate against them. Indeed, Carson told Haas that he "still laughs about this today because he feels [Mahdi] was just being manipulative and really wasn't struggling [with suicide]." J.A. 2774. He also referred to Mahdi as a "demon" based on his behavior. J.A. 2706. Rose described Mahdi's anger and violent conduct as a child, including "hit[ting his mother] a couple of times." J.A. 2288. Sophia testified about an incident where Mahdi slashed his mother's tires because she would not let him use her car.

During the PCR hearing, Haas and trial counsel also testified about their interactions with other members of Mahdi's family. Shareef spent most of his time during his meeting with Haas "talking a lot about his . . . personal beliefs," J.A. 2773, and otherwise "refused to participate," J.A. 2837. Vera refused to meet with anyone from the South Carolina defense team. Saleem would not speak with them. Nathan was not "helpful at all," J.A. 2777, and indeed "was proud of the fact that he had identified his nephew for the North Carolina authorities," J.A. 2814. And Nancy "wanted to brag about the accomplishments of the family. She did not want to address the issues with regard to her grandson and how he got there." J.A. 2816. In short, Mahdi's family put up road block after road block in preventing trial counsel's efforts to gather potential witnesses—family or otherwise—to testify on Mahdi's behalf.

To that end, trial counsel did all that could be expected of them given what they had and undoubtedly conducted a constitutionally sufficient investigation. *See Byram v. Ozmint*, 339 F.3d 203, 209 (4th Cir. 2003) ("[C]ounsel is only required to make a *reasonable*"—not exhaustive—"investigation for possible mitigating evidence." (emphasis added)); *McWee v. Weldon*, 283 F.3d 179, 188 (4th Cir. 2002) ("[T]he reasonableness of an investigation, or a decision by counsel that forecloses the need for an investigation, must be considered in light of the scarcity of counsel's time and resources in preparing for a sentencing hearing and the reality that counsel must concentrate his efforts on the strongest arguments in favor of mitigation."). To be sure, one could always say that defense counsel could have done more through the lens of hindsight. And that PCR counsel were able to locate non-family lay witnesses willing to testify years later does not mean, ipso facto, that trial counsel's investigation was deficient. "[T]here comes a point at which evidence . . . can reasonably be expected to be only cumulative, and the search for it distractive from more important duties." *Bobby v. Van Hook*, 558 U.S. 4, 11 (2009) (per curiam); *Wilson v. Greene*, 155 F.3d 396, 403 (4th Cir. 1998) (holding that counsel's performance is not deficient in declining "to spend valuable time pursuing what appeared to be an unfruitful line of investigation" (quoting *Bunch v. Thompson*, 949 F.2d 1354, 1364 (4th Cir. 1991))). That trial counsel made that determination when they did in light of their fruitless mitigation investigation efforts does not render their performance deficient. "This is not a case in which the defendant's attorneys failed to act while potentially powerful mitigating evidence stared them in the face or would have been apparent from documents any reasonable attorney would have obtained." *Bobby*, 558 U.S. at 11. To the contrary,

every avenue trial counsel explored was met with resistance and dead ends. And it was not unreasonable or against prevailing professional norms for counsel to rely on their qualified mitigation team to uncover any and all possible avenues for beneficial evidence, which they did. *See Rompilla v. Beard*, 545 U.S. 374, 389 (2005) ("Questioning a few more family members and searching for old records can promise less than looking for a needle in a haystack, when a lawyer truly has reason to doubt there is any needle there."); *Sigmon*, 956 F.3d at 200–01 (holding that trial counsel's investigation was reasonable when they used a mitigation expert and team); *Rhode v. Hall*, 582 F.3d 1273, 1283 (11th Cir. 2009) (per curiam) (holding it is not unreasonable for counsel to rely on a qualified mitigation investigator or other experts).

We also agree with the district court that the PCR court's determination that "much, if not all, of the evidence Mahdi offered at PCR regarding his family and social history" through non-family lay witnesses "was cumulative to the evidence presented in Mahdi's capital sentencing proceeding" through Hammock's testimony and exhibits, J.A. 7560, was not "sufficiently against the weight of the evidence," *Williams*, 914 F.3d at 312. During the PCR evidentiary hearing, Mahdi's teachers testified or submitted affidavits about the significant gaps in his education, his behavioral outbursts, and Shareef's failures as a father, though they all acknowledged they knew nothing about Mahdi's home life. What's more, they also presented negative testimony that hurt Mahdi's mitigation efforts. Specifically, they testified about Mahdi's anger and behavioral issues, including the fact that he used to "draw pictures of people hanging, the nooses and things like that." J.A. 2345.

Smith and Douglas Pond provided testimony concerning Shareef's troubled behavior in the community, specifically recounting the incident at the local Whites-only pool. Sheriff Woodley, who testified and was cross-examined by trial counsel during the sentencing hearing, submitted an affidavit about Shareef's violent behavior towards his mother and Vera as well as his lack of respect for authority. And Sharon Pond testified about Shareef's mental health issues, though she conceded she had never met Mahdi before and that medical professionals ultimately did not find any health or major mental illness in Shareef.

Trial counsel recognized the importance of Mahdi's family history and background, which explains why Hammock alluded to all of it in her testimony during the sentencing hearing. Specifically, she testified about Mahdi's "rather chaotic" childhood, J.A. 1597, including the extensive gaps in his education. She also testified at length concerning Shareef's violent and outlandish behavior towards Nancy and Vera; his reputation for being "at odds with people in the community, with his own family and with law enforcement," J.A. 1610; and his "inability . . . to parent appropriately and correctly," J.A. 1597. Trial counsel could hardly be said to have performed deficiently by presenting evidence that "would have added nothing of value," *Bobby*, 558 U.S. at 12, and was cumulative of what had already been submitted to the trial court. *See Morva v. Zook*, 821 F.3d 517, 530 (4th Cir. 2016) ("That the mitigating evidence [the petitioner] insists should have been presented at trial is merely cumulative to the evidence actually heard . . . further undercuts [his] claim for deficient performance."). And the PCR court's determination to that effect was certainly not "an error that lies beyond any possibility for fairminded disagreement."

Mays, 141 S. Ct. at 1146. Therefore, we affirm the district court's holding that the PCR court reasonably applied the first prong of the *Strickland* analysis to the Mitigation Evidence Claim.

But even if we were to reach the prejudice prong of the *Strickland* analysis, we would reach the same conclusion as the district court. Mahdi claims that "[w]ithout the mitigating evidence [presented during the PCR evidentiary hearing], the [trial court] had no context to understand [his] criminal history, presented by the State as aggravation, as a product of his long-term abuse and suffering." Opening Br. 64. Thus, in his view, the trial court "heard almost nothing that would humanize [Mahdi]" during the sentencing phase. *Id.* at 64 (quoting *Porter v. McCollum*, 558 U.S. 30, 41 (per curiam) (2009)). Had it possessed the "full picture of Mahdi's life," Opening Br. 64, he argues, "there is a reasonable probability that [the judge] would have struck a different balance" and sentenced him to life without parole *Id.* (quoting, *Wiggins v. Smith*, 539 U.S. 510, 537 (2003)). The State counters that Mahdi cannot show prejudice because the evidence adduced during the PCR evidentiary hearing would not have outweighed the overwhelming aggravating evidence before the trial court during sentencing.

We agree with the State. The PCR court's determination that Mahdi suffered no prejudice because the additional testimony would have added nothing of value was not so fundamentally flawed as to warrant habeas relief. "The question of whether counsel's deficiency prejudiced the defense centers on whether there is a reasonable probability that, absent counsel's errors, the sentencer would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Sigmon*, 956 F.3d at 192 (cleaned

up). And here, "when considered against the sheer magnitude of the aggravating evidence against" Mahdi, as discussed at length earlier, "it is difficult to see the allegedly unreasonable omission of this mitigation evidence [from the non-family lay witnesses] as prejudicial." *Plath v. Moore*, 130 F.3d 595, 602 (4th Cir. 1997). "[I]n weighing the omitted evidence against that actually used to convict and sentence [Mahdi], the mitigating evidence seems insufficient to shift the balance in [his] favor." *Id.*; *accord Wong v. Belmontes*, 558 US. 15, 20 (2009) (per curiam) (observing that to establish prejudice, the petitioner must show "a reasonable probability" that had counsel presented the evidence the court "would have returned with a different sentence".

It is also worth noting that each witness who testified during the PCR hearing would have likely introduced evidence that would have undermined Mahdi's mitigation strategy at sentencing. This is exemplified by the testimony from Mahdi's mental health experts, who opined that he malingered, expressed suicidality for purposes of manipulation, and had antisocial personality disorder. *See Satcher v. Pruett*, 126 F.3d 561, 572 (4th Cir. 1997) (finding counsel were not ineffective for declining to put on "potentially damaging psychiatric evidence" that the defendant had antisocial personality disorder). Unsurprisingly, this testimony was also consistent with the opinions from Dr. Martin and Dr. McKee, who reached the same conclusion.

Therefore, even if we were to reach this second prong of the *Strickland* analysis, we would still affirm the district court's holding.

4. The Judicial Sentencing Claim

Mahdi's third IAC claim contends the district court erred in rejecting his argument

that trial counsel were ineffective for failing to object to the trial court's sentencing in light of the Supreme Court's decisions in *Apprendi*,[40] *Ring*, and *Blakely*.[41] In response, the State argues that Mahdi has procedurally defaulted the Judicial Sentencing Claim. *See* Resp. Br. 45–46 & n.21–22 (raising the procedural bar argument and maintaining that it "did not abandon the procedural bar below and do[es] not do so here"). Mahdi suggests that if this Court determines the Judicial Sentencing Claim to be procedurally barred, we should remand for the district court to conduct an evidentiary hearing to determine whether he can clear the necessary hurdles to merit review. However, he cites no controlling precedent to support this approach. And he failed to provide any argument in his reply brief addressing the State's invocation of the procedural bar.[42] *See Alvarez v. Lynch*, 828 F.3d 288, 295 (4th Cir. 2016) ("[A]n outright failure to join in the adversarial process would ordinarily result in waiver."); *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010) ("Failure to respond to an argument results in waiver.").

As previously noted, Mahdi did not appeal the PCR court's rejection of this claim in his first state PCR proceeding. And the Supreme Court of South Carolina dismissed the Judicial Sentencing Claim on procedural grounds during the second proceeding. *See* S.C.

---

[40] *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

[41] *Blakely v. Washington*, 542 U.S. 296 (2004).

[42] The district court reached the merits of this claim without addressing whether it was procedurally barred. *See Mahdi*, 2018 WL 4566565, at *43 n.39. Because we are "entitled to affirm on any ground appearing in the record, including theories not relied upon or rejected by the district court," *Scott*, 328 F.3d at 137, and Mahdi offered no response to this argument in his reply brief, *see Alvarez*, 828 F.3d at 295 (reiterating that failure to engage in the adversarial process by responding to an argument ordinarily results in waiver), we will reach this issue here.

Code Ann. §§ 17-27-45, -90; S.C. App. Ct. R. 203(d)(3), 243. As such, the claim is procedurally barred. *See Longworth*, 377 F.3d at 447. And because Mahdi failed to provide any argument in his reply brief "demonstrat[ing] cause for the default and actual prejudice," *Sigmon*, 956 F.3d at 198 (quoting *Coleman*, 501 U.S. at 750), we affirm the district court's denial of Mahdi's Judicial Sentencing Claim.

But even if we were to reach the merits of Mahdi's argument, we discern no error in the district court's rejection of it. At bottom, Mahdi maintains that the trial court erred in following the mandates of South Carolina Code § 16-3-20 rather than expressly determining whether he knowingly and voluntarily waived his *Apprendi* rights as set out in *Ring* and *Blakely*. Mahdi suggests the trial court improperly "imposed a sentence greater than the maximum [it] could have imposed under state law," Opening Br. 73 (quoting *Blakely*, 542 U.S. at 303),[43] based on its consideration of "additional" evidence and facts in aggravation, J.A. 1661, beyond those contained in Mahdi's admission during his guilty plea. We disagree.

As for his claim under *Ring*, we find no error in the PCR court's conclusion that, at the time of Mahdi's sentencing, the Supreme Court of South Carolina had already decided three cases expressly finding the death penalty statute constitutional because *Ring* is not implicated when a capital defendant pleads guilty. *See State v. Crisp*, 608 S.E.2d 429, 432–33 (S.C. 2005); *State v. Wood*, 607 S.E.2d 57, 61 (S.C. 2004) *Downs*, 604 S.E.2d at 380. Indeed, we reached the same conclusion years after Mahdi's conviction. *See Lewis v.*

[43] The death penalty is never required under South Carolina law, even with a finding of an aggravating circumstance. S.C. Code Ann. § 16-3-20(B), (C).

Wheeler, 609 F.3d 291, 309 (4th Cir. 2010) ("[N]either *Apprendi* nor *Ring* holds that a defendant who pleads guilty to capital murder and waives a jury trial under the state's capital sentencing scheme retains a constitutional right to have a jury determine aggravating factors."). Thus, the PCR court's determination that trial counsel could not have been deficient for failing to raise a meritless claim was not "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103.

Similarly, there is no reason to conclude that *Blakely* would somehow render Mahdi's sentence unconstitutional.[44] In that decision, the Supreme Court stated that, under *Apprendi*, a judge may impose any sentence authorized "on the basis of the facts . . . admitted by the defendant." *Blakely*, 542 U.S. at 303. And pursuant to S.C. Code Ann. § 16-3-20(B), the death penalty may only be imposed upon a murder conviction when an aggravating circumstance is found. Here, Mahdi admitted to the two charged aggravating circumstances in his guilty plea: killing Captain Myers while in the commission of burglary and while in the commission of larceny with use of a deadly weapon. J.A. 1217; S.C. Code Ann. § 16-3-20(C)(a)(1)(d), (f). So no *Blakely* violation occurred in sentencing Mahdi to death.

And while the trial court did not need Mahdi's consent to judicial factfinding to

[44] Mahdi did not directly present this issue in the state courts. Rather, he consistently framed the Judicial Sentencing Claim as being unconstitutional solely under *Ring*. Thus, the PCR court did not consider the arguments under *Blakely* he now raises in his § 2254 petition. Nevertheless, because any claim under *Blakely* would fail on the merits, we will not address whether this additional aspect of the Judicial Sentencing Claim is independently procedurally barred.

sentence him to death, Mahdi nevertheless gave it. *Blakely* made clear that "[w]hen a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant . . . consents to judicial factfinding." 542 U.S. at 310. As the record makes abundantly clear, Mahdi did just that.

Before pleading guilty, trial counsel informed Mahdi that during sentencing "the State [would] have to put up [its] case and information and, of course, he[] [would] be allowed to put up information. The question [was] whether he [would] do that in front of a jury or whether he [would] do that in front of a judge." J.A. 1179. In response, the trial court made clear that if Mahdi "plead[ed] guilty, the sentencing proceeding [would] be conducted before the judge." J.A. 1183.

During the plea hearing, the trial court went to great lengths to ensure Mahdi understood that if it were to accept his guilty plea, "the jury [would] have no role in [his] sentencing and the decision as to what sentence [he would] receive [would] be left solely up to [the trial court]." J.A. 1198. Acknowledging that he understood all of this information, Mahdi affirmatively gave up his right to a jury trial, *see* J.A. 1198 ("I've given up *all of my rights* to a 12 party jury." (emphasis added)), and agreed to judicial sentencing.

Mahdi's consent to judicial factfinding during the plea hearing is also consistent with his trial attorneys' testimony during the PCR hearing. As the PCR court observed, trial counsel testified that "Mahdi decided to plead guilty because [he] believed he had a better chance of receiving a life sentence from [the trial court] than from the jury he had selected." J.A. 7636. The PCR court found this testimony credible, and Mahdi has presented no evidence suggesting this determination constitutes error, much less one that

is "stark and clear." *Elmore*, 661 F.3d at 849. What's more, "Mahdi offered no testimony to contradict trial counsel's testimony on these issues." J.A. 7636. Thus, the PCR court reasonably determined that "Mahdi wanted to be sentenced by [the trial court], not the jury he had initially selected and [e]mpaneled." J.A. 7636. And Mahdi has failed to present "clear and convincing evidence," *Bennett*, 842 F.3d at 322, that this determination was "sufficiently against the weight of the evidence," *Williams*, 914 F.3d at 312.

In short, the record leaves no doubt that Mahdi admitted to two aggravating circumstances in his guilty plea and knowingly and voluntarily waived any challenge to judicial factfinding by the trial court and that challenge would have been futile. Thus, the PCR court's determination was neither "diametrically different, opposite in character or nature, or mutually opposed" to *Ring* or to *Blakely*, *Vick*, 233 F.3d at 216, nor "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement," *Harrington*, 562 U.S. at 103. For these reasons, we affirm the district court's denial of the Judicial Sentencing Claim.

5. The Guilty Plea Claim

Turning to Mahdi's final IAC claim, he maintains that trial counsel were ineffective by "actively advising [him] that his guilty plea would be considered [a] mitigating [factor] at his judge sentencing." Opening Br. 78. In response, the State asserts that Mahdi procedurally defaulted this claim.[45] We agree with the State.

[45] As with the Jury Sentencing Claim, the district court expressly declined to address whether the Guilty Plea Claim was procedurally defaulted. *See Mahdi*, 2018 WL 4566565, at *44 n.42. Like the Judicial Sentencing Claim, however, the State raised the procedural (Continued)

Mahdi did not raise the Guilty Plea Claim during his first state PCR proceeding. And the South Carolina Supreme Court rejected his efforts to do so during the second state-court PCR proceeding on procedural grounds. Thus, Mahdi has procedurally defaulted this claim. *See Breard*, 134 F.3d at 619 (reiterating these grounds constitute a procedural bar). And because he made no effort to "demonstrate cause for the default and actual prejudice," *Sigmon*, 956 F.3d at 198 (quoting *Coleman*, 501 U.S. at 750), in his reply brief, we affirm the district court's denial of Mahdi's Guilty Plea Claim.[46] *See Alvarez*, 828 F.3d at 295 (recognizing that failure to respond to an argument in briefing ordinarily results in waiver).

III.

For the foregoing reasons, we affirm the district court's judgment in its entirety.

AFFIRMED

---

bar in its brief before this Court and Mahdi offered no response to this argument in his reply brief. As we are entitled to do, *Scott*, 328 F.3d at 137, we elect to reach this issue here.

[46] Even if we were to reach the merits, we would still affirm for the reasons stated by the district court. *See Mahdi*, 2018 WL 4566565, at *45–47. To that end, we emphasize that, contrary to Mahdi's efforts to contort the record, the trial court expressly considered his guilty plea as a "nonstatutory mitigating circumstance." J.A. 1670. It merely gave the argument no "significant weight." J.A. 1670; *see also Lockett*, 438 U.S. at 605 (1978) (noting the importance of "an individualized decision" in capital cases). And, of course, there is a clear distinction between "no significant weight" and "no weight." Thus, trial counsel's advice was correct, meaning their performance was not deficient.

GREGORY, Chief Judge, dissenting:

Mikal Mahdi does not claim that he is innocent. Rather, Mahdi asserts his humanity: his capacity for redemption. This appeal then raises questions, not of Mahdi's guilt, but of whether it is too late to remedy trial counsel's failure to show the many ways in which Mahdi was a product of a traumatic and tragic upbringing.

In some ways, it is. Here, as in countless other cases, AEDPA's often-unforgiving exhaustion requirement, 28 U.S.C. § 2254(b)(1), works with its merits review, 28 U.S.C. § 2254(d), to pose an insurmountable barrier for most of Mahdi's claims. In my view, much like the majority's, the district court did not err in granting summary judgment on Mahdi's claims that his trial counsel were ineffective for (1) failing to challenge the constitutionality of S.C. Code Ann. § 16-3-20; (2) failing to advise Mahdi of the advantages of jury sentencing; or (3) incorrectly advising Mahdi that the district court considered his guilty plea as mitigation.[1] Nor

[1] Although I agree with these conclusions, I do not join in all of the majority's rationale. For example, I disagree with the majority's suggestion that an attorney is necessarily effective when she declines to raise a federal constitutional claim that is thought meritless by a state supreme court. *See* Maj. Op. at 52. The United States Supreme Court enjoys the final say when it comes to interpreting the United States Constitution. *See Arkansas v. Sullivan*, 532 U.S. 769, 772 (2001) (holding that a state supreme court may not interpret the United States Constitution to provide different protection than the Supreme Court's federal constitutional precedents provide). I am not at all convinced that an attorney's failure to preserve an issue that, while foreclosed by a state court, remains an open question of federal constitutional law will in all cases reflect a reasoned, strategic decision. But the focus of this opinion is highlighting how the district court erred in denying Mahdi a full opportunity to seek federal habeas relief.

did the district court err in holding that Mahdi procedurally defaulted many of his failure-to-investigate "subclaims."[2]

But, unlike the majority, I believe the district court unquestionably applied the wrong legal standard to Mahdi's request for additional funding to hire an expert in race-based trauma. Without a valid ruling on Mahdi's request for supplemental funding, it is premature to determine whether Dr. Hill's testimony would allow Mahdi to present a "fundamentally altered" ineffective assistance of counsel claim based on trial counsel's failure to present evidence of Mahdi's race-based trauma. I would therefore vacate the district court's grant of summary judgment on this subclaim. Finally, I would vacate the district court's grant of summary judgment on Mahdi's abuse subclaim and remand for an evidentiary hearing. New evidence of the physical abuse Mahdi suffered as a child fundamentally alters his failure-to-investigate claim, and genuine disputes of material fact preclude summary judgment on whether *Martinez* excuses the procedural default that resulted from Mahdi's failure to raise this subclaim earlier.

Because I differ from the majority in these respects, I respectfully dissent.

I.

The district court first erred when it denied Mahdi additional funding based on the wrong legal standard. The CJA creates various entitlements for capital defendants who are financially unable to mount their own defense. 18 U.S.C. § 3599(a)(1). Relevant here,

[2] Mahdi raises four theories of ineffective assistance of counsel. He then divides one of those theories, trial counsel's failure to investigate and present mitigating evidence, into sub-categories, labeling each a "subclaim."

district courts may authorize defense counsel to obtain "investigative, expert, or other services [that] are reasonably necessary for the representation of the defendant." 18 U.S.C. § 3599(f). In my view, the district court understood "reasonably necessary" to require more than precedent allows. *See Ayestas v. Davis*, 138 S. Ct. 1080, 1092–94 (2018).

We typically defer to district courts' funding decisions, only finding error when faced with an abuse of discretion. *Id.* at 1094. But when a court applies the wrong legal standard, we're called to withhold that deference, *Koon v. United States*, 518 U.S. 81, 100 (1996)—a call that only rings clearer when the error impedes a defendant's ability to challenge the most permanent sentence a state may impose. Heeding that charge, I would vacate the district court's denial of Mahdi's funding request and remand for the district court to apply the correct legal standard.

A.

Shortly after Mahdi petitioned the district court for federal habeas relief, the court appointed counsel and granted him $34,500 to retain a mitigation investigator and a social historian.[3] Mahdi filed an ex parte motion for additional funding to present "recently

[3] Mahdi later realized he did not require the assistance of a social historian; he did not use any portion of the $12,500 allocated for that expert. There's no question that imposing the death penalty with any measure of due process carries a high price tag. Federal courts must award capital defendants funding for all reasonably necessary services covered by 18 U.S.C. § 3599(a)(2). As the Supreme Court has admonished death is different. *See Furman v. Georgia*, 408 U.S. 238, 306 (1972) (Stewart, J., concurring) ("[t]he penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice."); *see also Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (recognizing that "there is no question that death as a punishment is unique in its severity and irrevocability.").

discovered" evidence that would explain the severe impact of his past race-based trauma. J.A. 886; J.A. 29–33 (describing the recently discovered evidence that Dr. Hill would examine in-depth, distinguishing the recently discovered evidence from existing evidence, and explaining its impact on "address[ing] the multiple aspects of trauma that Mr. Mahdi experienced throughout his life."); *see* J.A. 31 ("Dr. Hill will be able to examine the impact of these traumatic events and stress factors on Mr. Mahdi in the context of his unique ancestry and extrinsic and intrinsic racial identity."). He argued that an expert's assessment of his unique and severe race-based trauma would produce new evidence that was "compelling and warrant[ed] presentation as a *Martinez* claim." J.A. 11. He then requested $25,000 to retain Dr. Hope Hill,[4] a professor and clinical psychologist, to develop and present this recently discovered evidence. *Id*.

At the court's request, Mahdi then provided (1) a brief outline of the "recently discovered evidence" related to Mahdi's race-based trauma; (2) a brief summary of how this information impacted the claims Mahdi sought to raise in the Amended Petition; and (3) a detailed description of the work to be performed by Dr. Hill to substantiate the estimated 90 hours of requested funding. J.A. 29–36. Mahdi argued that "the impact of the extrinsic trauma that [he had] experienced throughout his childhood [could] only be understood by looking at the intrinsic trauma that [he] suffered in relation to his racial

[4] Dr. Hill specializes in child development and social policy. J.A. 13. She has conducted extensive research on the development of at-risk youth and the effects of childhood exposure to violence, with a particular focus on Black youth. J.A. 21–24. Based on this expertise, Dr. Hill has qualified as an expert witness in courts across New York, Washington, D.C., Maryland, Pennsylvania, and North Carolina. J.A. 14–16.

identity." J.A. 32. Dr. Hill could clinically detail the effects of that trauma, "systemically evaluat[ing] how Mr. Mahdi's background, racial identity, and the trauma that he experienced emboldened his 'survivalist' mentality."[5] *Id.*

The district court nonetheless denied Mahdi's request. At the time, the court was bound by our decision in *Wright v. Angelone*, 151 F.3d 151, 163 (4th Cir. 1998). In *Wright*, we held that § 3599(f)'s "reasonably necessary" standard only allowed courts to provide funds for "investigative, expert, or other services" when "a substantial question exists over an issue requiring expert testimony for its resolution and the defendant's position *cannot be fully developed* without professional assistance." 151 F.3d at 163 (quoting *Williams v. Martin*, 618 F.2d 1021, 1026 (4th Cir. 1980)) (emphasis added). Understanding *Wright*—and, by extension, § 3599(f)—to impose a strict necessity requirement, the district court held that Mahdi failed to demonstrate that his *Martinez* claim "could not be fully developed" through the mitigation investigator and the social historian for which he'd

[5] It is not clear what the majority means when it maintains that Mahdi failed to either "identify any themes that he intended to pursue through this supplemental funding request" or "forecast what Dr. Hill's psychological report would contribute beyond the information his previously approved $34,500 in funding for a mitigation investigator and social historian had already yielded." Maj. Op. 67, 66–68. Assuming, as I must, that these statements take on something other than their literal meaning, I read the majority as requiring greater specificity than what Mahdi's supplemental funding request provided. But the problems with imposing such a demanding specificity requirement seem clear. First, the requirement finds no footing in the text of § 3599. Second, it runs counter to § 3599's objectives. Section 3599 provides funding for services that are reasonably needed, *but not yet available*, to a petitioner. If Mahdi had access to the full scope of Dr. Hill's clinical findings and assessments, he would not need additional funding to secure her expertise.

already secured funding. J.A. 40. In other words, the district court denied Mahdi's request because he had not shown it was impossible to develop his claim without Dr. Hill.

Eight months later, the Supreme Court unanimously rejected a similarly narrow construction of "reasonably necessary." *Ayestas*, 138 S. Ct. at 1093–95.

B.

Ayestas involved a challenge to the Fifth Circuit's two-step approach to evaluating federal habeas petitioners' funding requests. In the Fifth Circuit's view, an applicant for § 3599(f) funding could not show that investigative services were "reasonably necessary" unless the applicant could (1) show that he had a "substantial need" for the services; and (2) supplement his funding request with a "viable constitutional claim that [was] not procedurally barred."[6] *Ayestas*, 138 S. Ct. at 1088 (citing *Ayestas v. Stephens*, 817 F.3d 888, 895–96 (2016)). But § 3599(f), the Court held, does not impose these burdens.

Ayestas's analysis begins and ends with the text of the statute: specifically, the phrase "reasonably necessary." "Necessary," *Ayestas* acknowledges, has two possible meanings: one strict and one ordinary. *Id.* at 1093. "In the strictest sense of the term, something is 'necessary,' only if it is 'essential.'" *Id.* (citing Webster's Third New Int'l Dictionary 1510 (1993) (something is necessary if it "must be by reason of the nature of things," if it "cannot be otherwise by reason of inherent qualities"); 10 Oxford English

[6] The majority makes much of the fact that the standard once used by the Fifth Circuit differs from the one that *Wright* imposed. *See* Maj. Op. 69–70. The question of course is not whether *Wright*'s standard is identical to the one *Ayestas*, 138 S. Ct. at 1093–95 rejected, but whether it is consistent with the standard *Ayestas*, 138 S. Ct. at 1093–94 set forth. In my view, it is not.

Dictionary 275–276 (2d ed. 1989) (OED) (defining the adjective "necessary" to mean "essential"). The strict understanding of "necessary" fared poorly in the context of § 3599(f). *Id.* As *Ayestas* explains, it makes "little sense to refer to something as reasonably essential." *Id.*

Instead, *Ayestas* defines "necessary" in its ordinary sense—a term "used more loosely to refer to something that is merely important or strongly desired." *Id.* Understood this way, § 3599(f) does not require a petitioner to "*prove* that he will be able to win relief if given the services he seeks." *Id.* at 1094. Rather, the "statutory phrase calls for . . . a determination by the district court in the exercise of its discretion, as to whether a reasonable attorney would regard the [requested] services as *sufficiently important*." *Id.* at 1093 (emphasis added). The Fifth Circuit erred by requiring more. And because the district court understood *Wright* to impose a similar burden, it did too.

By its own explanation, the district court denied Mr. Mahdi's funding request because he failed to prove that he *could not* develop his *Martinez*/*Trevino* claim without the assistance of Dr. Hill. J.A. 40. Requiring that Mahdi prove that it was impossible to develop his claim without expert assistance was tantamount to imposing an *absolute* need requirement—a burden akin to, if not greater than, the "substantial need" requirement that *Ayestas* rejected. 138 S. Ct. at 1093–94.

The State contends that the fatal flaw in the Fifth Circuit's two-part test was not the "substantial need" requirement, but the requirement that a petitioner present a viable constitutional claim that was not procedurally barred. Response Br. at 26. This argument doesn't even appear to find favor with the majority. *See* Maj. Op. at 64–70. To be sure,

Ayestas rejected the Fifth Circuit's "viable constitutional claim" requirement. *Ayestas*, 138 S. Ct. at 1093–94. This requirement permitted district courts to deny a petitioner's request for funding if her underlying claim was procedurally defaulted. But, as *Ayestas* explains, the rule did not account for *Martinez v. Ryan*, 566 U.S. 1, 17 (2012) or *Trevino v. Thaler*, 569 U.S. 413, 416–17 (2013)—decisions that permit some federal habeas petitioners to present a substantial but procedurally defaulted ineffective-assistance-of-counsel claim by showing that state postconviction counsel was ineffective for failing to raise it. Sometimes, funding may be reasonably necessary to overcome that default. *Ayestas*, 138 S. Ct. at 1087, 1093–94. In those cases, where "funding stands a credible chance" of allowing petitioners to make that showing, "it may be error for a district court to refuse [it]." *Id.* at 1094.

But the egregiousness of the error at step two does not erase the error at step one. *Ayestas* explains in no uncertain terms that the difference between "reasonably necessary" and "substantial need" is a "problem"—a problem that was exacerbated by the "viable constitutional claim" requirement, but a problem no less. 138 S. Ct. at 1093. Nothing in *Ayestas* suggests that a "substantial need" requirement, standing alone, is consistent with § 3599(f). Even the Fifth Circuit understands *Ayestas* to prohibit both parts of its former two-part test. *See*, *e.g.*, *Nelson v. Davis*, 952 F.3d 651, 666 (5th Cir. 2020) ("In *Ayestas*, the Supreme Court determined that this circuit's requirement that petitioners demonstrate a 'substantial need' . . . was impermissibly more demanding than the 'reasonably necessary' standard established in [§ 3599(f)]."); *Crutsinger v. Davis*, 929 F.3d 259, 263 (5th Cir. 2019) ("[*Ayestas*] held that the Fifth Circuit's requirement that a movant show a 'substantial need' to demonstrate that funds were 'reasonably necessary' was not supported

by the text of § 3599"); *Jones v. Davis*, 927 F.3d 365, 373 (5th Cir. 2019) ("[*Ayestas*] held that the 'substantial need' requirement was more demanding than [§ 3599's] requirement that the services sought be 'reasonably necessary' to a defendant's post-conviction challenge."). I, too, take *Ayestas* to mean what it says.

C.

The district court did not cure its pre-*Ayestas* error when resolving Mahdi's post-*Ayestas* Rule 59 motion. Properly applied, § 3599(f) tasked the court with asking "whether a reasonable attorney would regard the [requested] services as sufficiently important." *Ayestas*, 138 S. Ct. at 1084. Three principal considerations drive this inquiry: (1) "the potential merit of the claims that the applicant wants to pursue"; (2) "the likelihood that the services will generate useful and admissible evidence," and (3) "the prospect that the applicant will be able to clear any procedural hurdles along the way." *Id.* at 1094.

The district court's Rule 59 order acknowledges *Ayestas* in form only, reciting the relevant standard but not applying it. *See* J.A. 909–11. The order lays bare the district court's belief that *Ayestas* merely echoed the standard set forth in the district court's original order:

> In denying Mahdi's request, the court recited the applicable standard under § 3599 and focused on whether the requested services were reasonably necessary to adequately represent Mahdi and develop his anticipated ineffective assistance of counsel claim.[] Ultimately, the court found that counsel had not shown that the requested psychologist's services were reasonably necessary in addition to the services of the mitigation investigator and social historian the court had already funded.

J.A. 911 (internal citations omitted).

But, as discussed, it did not. The district court's original order denying funding overstated § 3599's "reasonably necessary" requirement and failed to discuss the three considerations that, as *Ayestas* explains, drive the § 3599 analysis. The Rule 59 order is similarly silent on how the *Ayestas* factors apply to Mahdi's request. *See* J.A. 909–12.

At most, the district court's Rule 59 order impliedly considered the likelihood that the services Mahdi requested would generate useful and admissible evidence. *See* J.A. 912. But even here, the analysis fell short because it misunderstood the services Mahdi sought. Noting that Mahdi's mitigation investigator "had already gathered all of the pertinent factual information" and that Mahdi's counsel "had already formed reasoned arguments as to why that information was critical to Mahdi's mitigation presentation," the district court found itself unable to see what "additional value" Dr. Hill could provide. J.A. 912. The majority shares this view, insisting that the evidence that Dr. Hill would have provided was "already developed and presented to the PCR court." Maj. Op. at 65–66. This reasoning either ignores or misapprehends the expertise that mental health clinicians bring to the table. They do not, like mitigation investigators, detail the facts of a person's life in a historic sense. *Compare* J.A. 32 (explaining that Dr. Hill could discuss how the impact of Mahdi's traumatic childhood was exacerbated by his complex racial identity and his father's militant racial extremism), *with* J.A. 377 (detailing Dworkin's skills and responsibilities as a mitigation investigator). And their opinions are far from the common-sense intuitions that may guide an attorney's arguments absent a mental health expert's guidance. *See* J.A. 13–21 (detailing Dr. Hill's clinical training and experience); *see also* ABA Guidelines for the Appointment and Performance of Defense Counsel in Death

Penalty Cases 4.1, Commentary (rev. ed. 2003) ("ABA Guidelines"), reprinted in 31 Hofstra L. Rev. 913, 956–57 (2003) ("Counsel's own observations of the client's mental status, while necessary,[] can hardly be expected to be sufficient to detect the array of conditions [parenthetical omitted] that could be of critical importance.").

For the sake of illustration, consider the relationship of a physician to a claim that someone's physical injury entitles her to economic damages. Lay fact witnesses can detail physical symptoms, describe limitations, and set forth relevant timelines. Attorneys can then take that information and argue that it warrants relief for their client. And still, many factfinders would find the presentation lacking, left only to wonder whether a medical doctor would agree with the attorney's view of the injuries; whether there was a physiological explanation for the claimant's symptoms; whether the pain she described aligned with a physician's understanding of the disability. No one questions the need for medical experts when assessing the scope of physical injuries. That we find mental health experts unnecessary when defining the impact of past trauma says little about the need for that expertise, and much about us.

* * *

The standard that the district court applied—both in its original denial of supplemental funding and its Rule 59 order—is outdated and asks too much of petitioners seeking funds under § 3599(f). I would vacate the district court's denial of Mahdi's funding request and remand for the district court to correctly apply *Ayestas*.

II.

I would also vacate the district court's grant of summary judgment on two of Mahdi's failure-to-investigate subclaims: (1) that trial counsel were ineffective for failing to investigate and present mitigating evidence of Mahdi's race-based trauma, and (2) that trial counsel were ineffective for failing to investigate and present evidence of the childhood abuse he suffered at the hands of his father. The district court's error in adjudicating Mahdi's funding request precludes full review of his race-based trauma subclaim. Moreover, the district court erred in holding that Mahdi's childhood-abuse subclaim did not present a "substantial" claim of attorney ineffectiveness.

A.

Because the district court applied the wrong legal standard to Mahdi's request for funding, it is premature to review his race-based-trauma subclaim. The very reason Mahdi requested additional funding was to "develop and effectively present" the arguments for this subclaim. Opening Br. at 50. Mahdi explained that "[c]ounsel [] recently discovered evidence related to race-based trauma that [Mahdi] experienced during his childhood," J.A. 11, and that "Dr. Hill [would] be able to examine the impact of these traumatic events and stress factors on Mr. Mahdi in the context of his unique ancestry and extrinsic and intrinsic racial identity," J.A. 31. Mahdi argued that Dr. Hill's "in-depth examination of [his] lineage" would stand in stark contrast to the "very generally pieced together family biographies" that PCR counsel presented in the initial postconviction proceeding. J.A. 29. Stated differently, Dr. Hill's testimony might have fundamentally altered Mahdi's failure-to-investigate claim.

The majority maintains that Dr. Hill's investigation, as proposed by Mahdi's "vague representations", *see* Maj. Op. at 70, would add nothing new that the other seven mental health experts had already evaluated. Specifically, the majority argues that Dr. Cooper-Lewter "had already conducted an extensive evaluation of Mahdi's race-based trauma and family history." Maj. Op. at 70 (referencing J.A. 2955–65). While it is true that Dr. Cooper-Lewter examined *some* of Mahdi's family socio-history, Dr. Cooper-Lewter did not conduct an in-depth examination of Madhi's family lineage of the kind proposed by Dr. Hill to understand how Mahdi's inter-generational family trauma impacted him and his crimes. *Compare* J.A. 2955–64 (discussing Madhi's grandparents and parents' history) *with* J.A. 31–33 (proposing that Dr. Hill will investigate Mahdi's "unique ancestry and extrinsic and intrinsic racial identity" and how these experiences "emboldened his 'survivalist mentality.'"). Further, while I agree with the majority that Dr. Cooper-Lewter examined *some* of Mahdi's race-based trauma history, Mahdi identified some key gaps in Dr. Cooper-Lewter's investigation that are reasonably necessary to painting a complete picture of his psychological well-being leading up to this crime. For example, while Dr. Cooper-Lewter noted that Mahdi's father was "anti-government," constantly "raved about the 'New World Order' and 'white folks coming to kill them[,]' [and . . .] taught [Mahdi and his brother] how to shoot guns, fight with knives, and how to fist-fight and box." J.A. 2978. Mahdi noted Dr. Hill would fill in a gap of detailing how "he struggled with the inherent contradiction of his father's black separatist beliefs and his father's complete and

utter inability to provide for Mr. Mahdi's most basic needs." J.A. 32.[7] Dr. Hill's recently discovered evidence is reasonably necessary in this case because it would have explained the impact of his race-based trauma and lineage on Mahdi's psychological well-being, in context of his traumatic upbringing with his father, who indoctrinated Mahdi to have separatist, anti-government, and antagonistic views against whites. This is the evidence that jurors should have been appraised of to get a holistic view of all the stressors that Mahdi had leading up to his crimes. I disagree that "Mahdi did not present *any* meaningful argument . . ." and I disagree with the district court's incorrect application of the legal standard. Maj. Op. at 71 (emphasis added).

Had the district court applied the correct legal standard—with the correct understanding of the requested services—and granted funding to retain Dr. Hill, Mahdi's claim would stand on much different footing. Without Dr. Hill's testimony, Mahdi's only additional evidence of race-based trauma is Dworkin's affidavit. To be sure, this affidavit details some of the facts underlying Mahdi's race-based trauma in a way that PCR counsel

[7] Dr. Cooper-Lewter's general descriptions of Mahdi's family history are distinct from Dr. Hill's. At best, Dr. Cooper-Lewter stated that: "Shareef would constantly tell Mikal what he did wrong, but would provide him with no solutions. While he lectured on work ethic, he had no job and made no attempt to work. The family lived on public assistance, what his grandmother provided, and ultimately what Mikal could steal. While Shareef would spend hours lecturing Mikal about stealing being wrong, he would then "thank him" and keep the stolen property or funds." J.A. 2980. Dr. Cooper-Lewter also described Mahdi's upbringing before committing his first offense, at age 14, as "Mikal described it though, he was basically on his own, stealing to survive and continuing to get the preaching/lectures from Shareef, followed by Shareef keeping the property and thanking him." J.A. 2981. Thus, while Dr. Cooper-Lewter provided a descriptive history, Dr. Hill, according to Mahdi, would connect his family's intergenerational history of race-based trauma to his criminal history.

did not. *See* J.A. 367–69, 517 ("While PCR counsel may not have traced Mahdi's lineage all the way back to 1648, as Mr. Dworkin did, they did present evidence regarding Mahdi's family's history, racial views, and significant experiences with racism, and the very segregated nature of their environment."). But at its core, Dworkin's affidavit, like the PCR testimony, reflects only the existence of segregation, racial animus, and self-loathing in Mahdi's lineage—not their effects. J.A. 367–69. It strengthens but does not change "[t]he heart of the claim." *Gray v. Zook*, 806 F.3d 783, 799 (4th Cir. 2015); *see also Vandross v. Stirling*, 986 F.3d 442, 451 (4th Cir. 2021) (explaining that to assert a new claim, a petitioner must do more than "merely strengthen[] the evidence presented in the state PCR hearing").

In my view, Dr. Hill's testimony was likely to do what Dworkin's affidavit cannot. We don't know what we don't know. But Dworkin's affidavit gives me good reason to believe that, aided by Dr. Hill's expertise, Mahdi would have had a compelling argument that his race-based trauma subclaim was "new," *Wise v. Warden*, 839 F.2d 1030, 1033 (4th Cir. 1988), and that *Martinez* excused the procedural default that resulted from Mahdi's failure to timely exhaust this claim, *see* Maj. Op. at 66 (citing *Vandross*, 986 F.3d at 450 (4th Cir. 2021) (noting that one of the requirements for invoking *Martinez* is that "it is likely that no state court will hear the prisoner's claim")). Because the district court's *Ayestas* error precludes meaningful review, I would vacate the district court's grant of summary judgment on the race-based-trauma subclaim and remand for further proceedings.

B.

The district court also erred in holding that Mahdi could not overcome the procedural default on his subclaim that trial counsel were ineffective for failing to uncover and present evidence of his childhood abuse. This subclaim is new and presents a substantial claim of ineffective assistance. The only remaining issue is whether PCR counsel performed deficiently by failing to raise this claim in the state postconviction proceedings—an issue that, on this record, should not have been resolved with summary judgment.

1.

To begin, this subclaim is a new one. A federal habeas petitioner presents a new and unexhausted claim when he submits evidence which (1) "was not presented to the state court," and (2) "places his case 'in a significantly different and stronger evidentiary posture than it was when the state courts considered it.'" *Wise*, 839 F.2d at 1033. New evidence, even when favorable, will not always change a claim at its core. *Gray*, 806 F.3d at 799. But when a federal habeas petitioner "presented *no evidence* to the state courts to establish the existence of fact X, the claim will be fundamentally altered by the new evidence presented to the district court." *Winston v. Kelly*, 592 F.3d 535, 550 (4th Cir. 2010).

The question of whether Mahdi has presented a new claim "is necessarily case and fact specific." *Id.* at 549 (quoting *Morris v. Dretke*, 413 F.3d 484, 491 (5th Cir. 2005)). Here, Mahdi's first cousin, Nate Burwell, IV, recently revealed "substantial insights into the family dynamics," recalling "Mikal and [his brother] being beaten by their father as children." J.A. 317. Years later, Nate can "hear them screaming still." *Id.*

PCR counsel did not interview Nate or present any evidence that Mahdi suffered severe physical abuse as a child at the hands of his father, Shareef. In fact, all evidence was to the contrary. *See*, *e.g.*, J.A. 2240 ("[Shareef] was always doting on his sons and always very, very affectionate with them."), 2243 ("[Shareef] couldn't institute discipline. There was no discipline and he was real soft with his discipline . . . he was not heavy-handed at all."), 2541–42 (Q: Isn't it true that there was no evidence in this case that Mr. Mahdi was physically abused by his father? A: . . . In the medical reports there was [an] incident where he fell off his bike and hurt his leg and another time his arm, but as far as physical violence from his father, no."). The only evidence of Shareef's physical abusiveness related to Vera and Nancy. J.A. 2285–86 ("[Vera] told me Shareef raped her on her wedding night."), 2298 ("[Vera] was covered in bruises from head to toe and she said Shareef beat her up. She was trying to see the children and he beat her up."), 2403 ("[Mahdi] then saw his father kidnap and beat his mother and he saw his father also beat his own mother.").

Trial counsel also failed to interview Nate or present any evidence of the extreme physical abuse Mahdi suffered as a child. Looking only to the picture of Shareef that trial counsel painted, a factfinder would believe that Shareef was specifically *not* physically abusive toward his children. Given that Mahdi "presented *no evidence*" on this issue in both the PCR and trial courts, I see no way to view this subclaim as anything but new. *See Winston*, 592 F.3d at 550.

The majority does not dispute that defense counsel, at both the trial and PCR stage, painted Shareef as a loving and doting father—affectionate—who particularly favored Mahdi. Maj. Op. at 29. Rather, it simply considers allegations of severe childhood abuse to

be "new bits of evidence" rather than "critical evidence that makes [Mahdi's] claim both stronger *and* significantly different." Maj. Op. at 89 (quoting *Moore v. Stirling*, 952 F.3d 174, 183 (4th Cir. 2020)). By doing so, it views the strength of childhood-abuse evidence as mitigating evidence much differently than the Supreme Court,[8] the South Carolina trial court,[9] the State's trial counsel,[10] and the State's PCR counsel,[11] among others—myself included.

2.

Notably, a new claim often poses as much of an obstacle for petitioners as it does an opportunity. In failing to raise and exhaust his abuse-based theory of ineffectiveness, Mahdi procedurally defaulted it, saddling himself with the task of identifying a basis to excuse that default. *Owens v. Stirling*, 967 F.3d 396, 409, 421–22 (4th Cir. 2020). As onerous as that burden may be, *Martinez v. Ryan* paved a way for him to carry it. 566 U.S. 1, 14 (2012).

---

[8] *See*, *e.g.*, *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (indicating that the "graphic description" of a "childhood[] filled with abuse and privation . . . . might well [] influence[a] jury's appraisal of [a defendant's] moral culpability"); *Penry v. Johnson*, 532 U.S. 782, 796–803 (2001) (rejecting jury instructions because they failed to provide an adequate vehicle for jurors to consider childhood abuse as mitigation evidence); *Eddings v. Oklahoma*, 455 U.S. 104, 114–16 (1982) (noting that the "beatings by a harsh father" were "particularly relevant" as mitigating evidence for young defendants).

[9] J.A. 1669–70 ("In reviewing the testimony of Marjorie Hammock, the defense's clinical social worker expert, there's no reference to physical or sexual abuse suffered by the defendant."), 1684 (same).

[10] J.A. 1283–84 (emphasizing that Mahdi did not suffer physical abuse), 1631 ("There's never any evidence of . . . physical abuse"), 1632 ("And, again, what's not in here? He was never physically abused"), 1695–96 ("In reviewing Ms. Hambrick's [*sic*] testimony, what is absent is any reference to physical abuse"), 1696 ("There is absolutely no evidence of [] abuse").

[11] J.A. 2491 (emphasizing that Mahdi did not suffer physical abuse); 2541–42 (same).

As the majority notes, *Martinez* requires petitioners to show that: (1) their underlying ineffective-assistance-of-trial-counsel claim is "substantial"—that is, it must have "some merit" under the governing ineffective-assistance-of-counsel standards; (2) they were not represented or had ineffective counsel during the state PCR proceeding; (3) the state PCR proceeding was the initial review proceeding; and (4) state law required the prisoner to bring the claim in the initial-review collateral proceeding. *Trevino*, 569 U.S. at 423; *see also* Maj. Op. at 74. It's undisputed that Mahdi's claim satisfies *Martinez's* third and fourth elements. To satisfy the first two elements, Mahdi need only show that there was "some merit" to his claim that he was prejudiced by constitutionally deficient trial counsel, and that PCR counsel "performed deficiently, under the first prong of *Strickland*, by failing to exhaust the underlying ineffective-assistance-of-trial-counsel claim." *Owens*, 967 F.3d at 423.

Our assessment of counsel's performance under *Strickland* is "highly deferential." *Id.* at 412. But that deference is not without limits. *Stokes v. Stirling*, 10 F.4th 236, 246 (4th Cir. 2021); *Williams v. Stirling*, 914 F.3d 302, 313–16 (4th Cir. 2012). The American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases indicate "[a] 'well-defined norm' . . . 'that investigations into mitigating evidence should comprise efforts to discover *all reasonably available* mitigating evidence.'" *United States v. Runyon*, 989 F.3d 716, 731 (4th Cir. 2020) (quoting *Williams*, 914 F.3d at 313).

Capital defense counsel are therefore deficient when they "fail[] to investigate and to present substantial mitigating evidence to the sentencing jury." *Williams*, 529 U.S. at 390 (2000). To be sure, "strategic choices made after thorough investigation of law and facts

relevant to plausible options are virtually unchallengeable." *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (quoting *Strickland*, 466 U.S. at 690–91). "[A]nd strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Id.* But a cursory investigation does not "automatically justif[y] a tactical decision with respect to sentencing strategy." *Id.* at 527. Courts must look further, "consider[ing] not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." *Id.*; *see also id.* at 534 (counsel performed deficiently by abandoning investigation after discovering that the defendant had alcoholic parent, spent childhood in foster care, lacked consistent schooling, and suffered from child hunger); *Williams*, 529 U.S. at 396 (counsel performed deficiently by failing to uncover and present mitigating evidence at sentencing) (citing 1 ABA Standards for Criminal Justice -4-4.1, Commentary, pp.4–55 (2d ed. 1980)).

a.

The district court appears to have rejected Mahdi's *Martinez* claim based on its conclusion that the underlying IAC claim did not have even *some* merit. *See* J.A. 518. The district court recognized the significance of childhood abuse as mitigation evidence, *id.* (citing *Porter v. McCollum*, 558 U.S. 30, 43 (2009)), but nonetheless felt that it could not fault trial counsel's failure to uncover it. J.A. 518. Why? Because the "two people who would have known about the abuse—Shareef and Mahdi—[failed to] disclose[] this information." *Id.*

I cannot join in reasoning that requires so little of capital defense counsel. Common sense should have led trial counsel to suspect that Mahdi and Shareef might deny or understate past abuse. "One of the things that we know is that abused children–even abused adults–tend to cling to their abuser." J.A. 2424; *see also* ABA Guidelines 10.7, Commentary ("Obtaining [sensitive] information typically requires overcoming considerable barriers such as shame, denial, and repression, as well as other mental emotional impairments from which the client may suffer."). And those who have perpetrated abuse are likely to deny it for different, but equally obvious, reasons. Let us not forget that someone once accused Shareef of physical abuse—he then tied her to a tree and whipped her legs with the buckle end of a belt. J.A. 2925.

Even if common sense didn't lead trial counsel to uncover Mahdi's abuse, the evidence should have. *Williams*, 914 F.3d at 314–16. Trial counsel knew that Shareef was incredibly violent to vulnerable people in his life. At the sentencing phase, they elicited testimony from Hammock that Shareef had abused his wife so severely that she left her two children to escape it. J.A. 1600. Hammock also testified that Shareef had "issues that prohibited him from being a good father." J.A. 1608. She explained that Shareef was "extremely troubled," J.A. 1598, prone to "outburst," J.A. 1610, and "not really able to function well," J.A. 1600. The postconviction proceedings reveal that trial counsel also knew that violent outbursts were a hallmark of Shareef's parenting. J.A. 2819, 2823, 2898. In contrast, there is no evidence that trial counsels' decision not to investigate or present mitigating evidence of childhood abuse was a strategic one. Nor is there any evidence that

they believed evidence of childhood abuse would in some way harm Mahdi's defense or undermine their theory of the case.

Trial counsel ignored both common sense and unrefuted evidence of Shareef's impulsiveness, violence, irrationality, and poor parenting. They ignored the signs that some of the other adults in Mahdi's life likely towed the line between discipline and uncontrolled physical force. *See* J.A. 2774, 2811. And they ignored the very likely possibility that the violence Mahdi exhibited as a child reflected the violence he saw and experienced firsthand. Instead of following these "red flags" to their logical conclusion, *Williams*, 914 F.3d at 315, trial counsel decided that Mahdi had not been abused as a child because both the abuser and the abused denied it. Surely, we do not set the bar so low. *See Porter*, 558 U.S. at 40 (citing *Rompilla v. Beard*, 545 U.S. 374, 381–82 (2005)). A defendant's "fatalistic or uncooperative" behavior "does not obviate the need for defense counsel to conduct *some* sort of mitigation investigation."[12] *Id.* (citing *Rompilla*, 545 U.S. at 381–82); *see also* J.A. 2424.

[12] The district court cited our decision in *DeCastro v. Branker*, 642 F.3d 442, 456 (4th Cir. 2011) in support of its contrary view. *Mahdi v. Stirling*, No. 8:16-3911-TMC, 2018 WL 4566565, at *36 (D.S.C. Sept. 24, 2018). In *DeCastro*, we reviewed a state PCR court's decision that trial counsel were not ineffective for failing to investigate and present mitigating evidence that the defendant had withheld pre-trial but disclosed following sentencing. 642 F.3d at 456. Because this claim was "adjudicated on the merits," we reviewed the state court's decision through 28 U.S.C. § 2254(d)(1)'s rigorous standard and concluded that it was not unreasonable. *Id.* at 449, 456. Even setting aside the factual differences between these two cases, the differing legal standards precludes *DeCastro* from being a helpful analog. I cannot overstate the difference between our review of an ineffective assistance of counsel claim through the lens of § 2254(d)(1) and our review of the ineffectiveness that undergirds a *Martinez* claim. When petitioners invoke *Martinez* to excuse a procedural default, they necessarily present claims of ineffectiveness that have not been presented to state courts nor adjudicated on the merits. *Martinez*, 566 U.S. at 11. District courts evaluate those claims de novo, unconstrained by § 2254(d)(1). *Gray*, 806
(Continued)

Nor does the peculiar demeanor of a defendant's family members free capital counsel from uncovering all reasonably available mitigation evidence. And yet, the record does not reveal what, if any, efforts trial counsel undertook to find favorable mitigation evidence once they grew frustrated with those who knew Mahdi best. Indeed, it is difficult to imagine counsel showing more disrespect for a former client's family (and most likely source of mitigation evidence) than trial counsel demonstrated at Mahdi's state postconviction hearing.[13] At one point, lead trial counsel testified:

> So, we had grandmother who wanted to save the family name. We had [an uncle] who is the dean of men frying fish and he just didn't care. He was proud of the fact he identified [Mahdi to the police]. We had [an aunt] who still harbored resentment about the fact that [Mahdi's brother] attempted to burn down her house and you had [another uncle] who thought it was funny that [Mahdi] was threatening to kill himself.

J.A. 2820–21. Later, upon labeling Mahdi's family "dysfunctional," lead trial counsel lamented, "There are many [B]lack families like that." J.A. 2829.

F.3d at 789. Thus, a holding that a state court did not act unreasonably in rejecting a petitioner's ineffective-assistance-of-counsel claim should not be understood to mean that counsel was not, in fact, ineffective.

[13] *See*, *e.g.*, J.A. 2814 ("When we arrived in the yard [Nathan] drove up. He was slightly overweight and he was inside a Mazda Miata two-seater . . . . So he drove up in this Miata and he was slightly overweight. He walked in the house and we introduced ourselves to him, but he had an attitude . . . . He is in this car that's too small. He is the Dean of Men. He walks inside of the house. He has an attitude toward us. This is a guy who's probably in his late to early 50's and he's living with his mama . . . ."), J.A. 2819 ("[Shareef] is preaching black power every day, empowerment of the black man, but he can't hold a job. He can't pay his bill."), J.A. 2822 ("[Nancy] was older and she was confused . . . . Each time you talked to her she would sit down [with] . . . some little pamphlets and booklets about different people in the family and what they had accomplished. It was almost as if she wanted to be absolved of all responsibility and she wanted the world to know that [they were] still good people.").

Counsels' belief that the adults in Mahdi's life were "dysfunctional" should have caused them to seek information from another generation of family members—Mahdi's cousins—not to abandon his search altogether. *See* ABA Guidelines 10.7, Commentary ("Barring exceptional circumstances, counsel should seek out and interview potential witnesses, including, but not limited to . . . . members of the client's immediate and extended family."); *id.* (detailing the importance of "[a] multi-generational investigation" that "extend[s] as far as possible both vertically and horizontally"). Had they done so, trial counsel would have easily uncovered the same key witness federal habeas counsel found: Nathan's son, Nate Burwell, IV.

Instead of investigating further, trial counsel tapped a social worker and prison adaptability expert as Mahdi's only mitigation witnesses. Counsel gave Hammock sole responsibility for conveying the trauma of Mahdi's childhood experience—she presented a sanitized version of Mahdi's life, concluding that Mahdi had "a rather chaotic and different kind of childhood."[14] J.A. 1597. But, as this Court has recently explained, the need to

[14] A rather chaotic and different kind of childhood. To be clear: Mahdi was raised by a single parent after his mother—upon suffering severe and sustained physical and sexual abuse—left. Vera left without her two young boys because Shareef threatened to kill them if she tried to take them. As Mahdi was growing up, Shareef withheld access to formal schooling. In the summer after Mahdi's second-grade year, Shareef used him as bait to see Vera. When Vera arrived, Shareef abused her, threatened to kill her in front of Mahdi, then took her to the woods to assault her. When Shareef's mother learned of this and confronted him, he bound her to a tree and whipped her legs with a belt. Eventually, Shareef took Mahdi out of public school to "homeschool" him. Shareef's curriculum involved teaching Mahdi how to shoot guns so that he would be ready when the "white folks" came to get them; teaching Mahdi how to stab people; and indoctrinating Mahdi with an ideology of racial and religious supremacy. This is not a "rather chaotic and different kind of childhood," *see* J.A. 1597; it is "profound and chronic trauma that [is] (Continued)

present the "profound and chronic trauma" of someone's childhood is at its highest when the alternative is to put forth "almost no mitigation presentation at all." *Stokes*, 10 F.4th 236, 253 (4th Cir. 2021). In my view, there is at least some merit to Mahdi's claim that trial counsel were deficient for cutting their investigation short.

Moreover, this deficiency was likely prejudicial. Trial counsel did not present any lay witnesses during the sentencing phase of Mahdi's capital proceedings. And Hammock's brief rendition of Mahdi's family history did very little to humanize him when considered alongside his serious crimes. *See* J.A. 1597–1612. As the majority's thorough recitation of the facts illustrate, Hammock's testimony was vague, only hinting at the chaos and transience of Mahdi's living circumstances; Shareef's "inability . . . to parent appropriately and correctly," J.A. 1597; and the "confrontational" relationship between Shareef and other members of the family that led to Mahdi's isolation and radicalization, J.A. 1601. These abstractions did very little to deepen the trial court's understanding of "the individual behind the aggravating evidence." *Stokes*, 10 F.4th at 252 (4th Cir. 2021) (citing *Allen v. Woodford*, 395 F.3d 979, 1000 (9th Cir. 2005)).

As much is reflected in the trial court's sentencing decision. The court's consideration of Mahdi's "turbulent and transient childhood and upbringing" as a mitigating circumstance spans four sentences. J.A. 1669. It *first* notes that there was "no reference to physical . . . abuse suffered by the defendant" and that "defendant's father . . . continually

about as extreme as any child can experience." *Stokes*, 10 F.4th at 253 (holding that capital counsel performed deficiently when they conveyed profound and chronic trauma as merely a "difficult upbringing" and "struggles growing up").

expressed great care and concern for [Mahdi's well-being]." J.A. 1669–70. Then, viewing Hammock's testimony as a whole, the court concludes that Mahdi's upbringing was simply "less than ideal" but bore no relation to his criminal conduct. J.A. 1670. In the end, the trial court gave Mahdi's upbringing "no weight" as a mitigating circumstance. *Id.*

Evidence of childhood abuse is always "especially mitigating, and its omission is thus particularly prejudicial." *Andrews v. Davis*, 944 F.3d 1092, 1117 (9th Cir. 2019). Against this backdrop—where trial counsel's mitigation presentation had no bearing on the factfinder—evidence of childhood abuse would have been particularly powerful. In my view there is at least some merit to Mahdi's argument that he was prejudiced by trial counsel's deficient mitigation presentation.

b.

For many of the same reasons, there is a good reason to believe that PCR counsel's failure to investigate Mahdi's childhood abuse and challenge trial counsels' effectiveness was deficient. That said, I would not reach that question because genuine issues of material fact preclude judgment on the issue.

As discussed above, the question of whether an attorney's performance was deficient turns in large part on whether their decisions were strategic. *Wiggins*, 539 U.S. at 521 (quoting *Strickland*, 466 U.S. at 690–91). Even though the district court proceeding was parties' first opportunity to create a record for why PCR counsel made the decisions it did, the district court denied Mahdi's request for an evidentiary hearing. J.A. 529–30. A perhaps unintended result of this is that the State did not produce evidence or argue that PCR counsel's failure to investigate and present evidence of Mahdi's childhood abuse was a

strategic choice. Instead, it sought judgment on this claim on other grounds—namely, that the abuse subclaim was not new and that, even if it were, trial counsel were not ineffective for failing to raise it. *See* J.A. 117–18. But, as discussed above, both of these premises are incorrect.

In contrast, Mahdi presented evidence that state counsel's failure to uncover Mahdi's childhood abuse was not at all strategic. In his opposition brief, Mahdi argued that "PCR counsel . . . . had no strategic reason . . . for failing to interview witnesses uncovered by Federal habeas counsel who witnesse[d] abuse at the hand of Mr. Mahdi's father." J.A. 339–40 (citing Dworkin Aff., Ex. 1). Dworkin's affidavit then gave substance to this argument, identifying the witness that PCR counsel overlooked and previewing the relevant testimony. J.A. 370–71. Viewed against Stirling's silence on the issue, this evidence—while limited—should have been fatal to Stirling's motion. *See* Fed. R. Civ. Proc. 56(a), (c)(1)(A).

I would vacate the district court's judgment on this subclaim and remand for the district court to hold the evidentiary hearing that Mahdi requested.

III.

The district court's standard for denying Mahdi's funding request was inconsistent with the directives set forth in 18 U.S.C. § 3599. And its grant of summary judgment unduly discounted the gravity of Mahdi's abuse subclaim. Because the majority overlooks these errors for the sake of finality, I respectfully dissent.

FILED: December 20, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-3
(8:16-cv-03911-TMC)

MIKAL D. MAHDI

Petitioner - Appellant

v.

BRYAN STIRLING, Commissioner, South Carolina Department of Corrections; MICHAEL STEPHAN, Warden of Broad River Correctional Institution

Respondents - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: April 8, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-3
(8:16-cv-03911-TMC)

MIKAL D. MAHDI

Petitioner - Appellant

v.

BRYAN STIRLING, Commissioner, South Carolina Department of Corrections; MICHAEL STEPHAN, Warden of Broad River Correctional Institution

Respondents - Appellees

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Mikal D. Mahdi, #5238, Petitioner, vs. Bryan Stirling, Commissioner, South Carolina Department of Corrections; Willie D. Davis, Warden, Kirkland Correctional Institution, Respondents.	C/A No. 8:16-3911-TMC **OPINION & ORDER**

This matter is before the court on Respondents' motion for summary judgment (ECF No. 105) and motion to strike (ECF No. 125). Petitioner Mikal D. Mahdi ("Mahdi") is a death-sentenced state prisoner who seeks relief under 28 U.S.C. § 2254. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02(B)(2), D.S.C., pre-trial proceedings were referred to a magistrate judge. On September 24, 2018, the court withdrew the reference of this matter and now enters an order on the pending motions. (ECF No. 137). Having carefully considered the parties' submissions and the record in this case, the court grants Respondents' motion for summary judgment. (ECF No. 105). In addition, Respondents' motion to strike (ECF No. 125) is granted in part and denied in part.

BACKGROUND

The following facts are recited, verbatim, from South Carolina Supreme Court Chief Justice Jean Hoefer Toal's concurring opinion in Mahdi's direct appeal:

On July 14, 2004, Petitioner, then a resident of Virginia, embarked on a crime spree that would span four states. Petitioner stole a .380 caliber pistol from his neighbor, a set of Virginia license plates, and a station wagon. Petitioner left Virginia and headed to North Carolina.

On July 15, Petitioner entered an Exxon gas station in Winston-Salem, North Carolina armed with the .380 pistol. Petitioner took a can of beer from a cooler and placed it on the counter. The store clerk, Christopher Jason Boggs, asked Petitioner for identification. As Boggs was checking Petitioner's identification, Petitioner fatally shot him at point-blank range. Petitioner fired another shot into Boggs as he lay on the floor. Petitioner then attempted unsuccessfully to open the store's cash register. Petitioner left the store with the can of beer, and headed to South Carolina.[1]

Early in the morning of July 17, Petitioner approached Corey Pitts as he sat at a traffic light in downtown Columbia, South Carolina. Petitioner stuck his gun in Pitts' face, forced him out of his car, and stole Pitts' Ford Expedition. Petitioner replaced the Expedition's license plates with the plates he had stolen in Virginia, and headed southeast on I-26.

About thirty-five minutes down the road, Petitioner stopped at a Wilco Hess gas station in Calhoun County and attempted to buy gas with a credit card. The pump rejected the card, and Petitioner spent forty-five minutes to an hour attempting to get the pump to work. Due to his suspicious behavior, the store clerks called the police. Aware that the clerks' suspicions had been alerted, Petitioner left the Expedition at the station and fled on foot through the woods behind the station.

About a quarter to half mile from the station, Petitioner came upon a farm owned by Captain James Myers, a thirty-one year veteran law enforcement officer and fireman. Petitioner broke into a work shop on the Myers property. Once inside the work shop, Petitioner watched television and examined Myers' gun collection. Petitioner found Myers' shotgun and used the tools in the shop to saw off the barrel and paint it black. Petitioner also took Myers' .22 caliber rifle and laid in wait for Myers.

That day, Myers had been at the beach celebrating the birthdays of his wife, sister, and daughter. Myers had visited with his father before returning to his farm. Upon arriving at the farm, Myers stopped by the work shop, where he was confronted by Petitioner. Petitioner shot Myers nine times with the .22 rifle. Petitioner then poured diesel fuel on Myer's [sic] body and set the body on fire. Petitioner stole Myers' police-issued truck, and left with Myers' shotgun, his .22 rifle, and Myers'

---

[1]Mahdi has since pled guilty to first-degree murder in the death of Mr. Boggs and received a life sentence in North Carolina. (ECF No. 51-1 at 56 n.4).

police-issued assault rifle.

> Later that evening, Myers' wife, also a law enforcement officer, became worried when Myers did not return home. Mrs. Myers drove to the work shop and discovered Myers' burned body lying in a pool of blood.
>
> Petitioner escaped to Florida, where he was spotted by police on July 21 driving Myers' truck. Fleeing the police, Petitioner abandoned the truck [and proceeded] on foot in possession of the assault rifle. When cornered by police, Petitioner abandoned the rifle and was eventually taken into custody.

Mahdi v. State, 678 S.E.2d 807, 809 (S.C. 2009) (Toal, C.J., concurring) (footnote added).

PROCEDURAL HISTORY

Guilty Plea & Sentencing

On August 23, 2004, the Calhoun County grand jury indicted Mahdi for murder, grand larceny, and second degree burglary, and the State filed its Notice of Intent to Seek the Death Penalty. (ROA 1829-35).[2] The South Carolina Supreme Court ordered South Carolina Circuit Court Judge Clifton Newman to preside over Mahdi's case. (ROA 1841). Judge Newman appointed attorneys Carl Grant and Glenn Walters to represent Mahdi. (ROA 8). However, in 2016, upon Grant's motion and with the State and Mahdi's consent, the court relieved Mr. Grant as counsel because he had sustained a serious injury in a motorcycle accident. (ROA 104-05). Mr. Walters replaced Mr. Grant as lead counsel and the court appointed Joshua Koger, Jr., as second chair counsel. (ROA 109).

From November 26th to 29th, 2006, the parties engaged in individual *voir dire* and selected a capital jury. (ROA 207-1318). However, on November 30th, prior to the jury being sworn, Mahdi waived his right to a jury trial and pled guilty to all charges. (ROA 1336-68). Following the

[2]The Record on Appeal can be found at ECF Nos. 31-5 to 31-12.

mandatory twenty-four hour statutory waiting period, Mahdi's sentencing proceeding before Judge Newman began on December 4, 2006. (ROA 1372). As aggravating circumstances, the State alleged that Mahdi: (1) committed the murder during the commission of a burglary; (2) committed the murder during the commission of a larceny with a deadly weapon; (3) committed the murder during the commission of a robbery while armed with a deadly weapon; and (4) murdered a law enforcement officer during or because of the performance of his official duties. (ROA 1838). Judge Newman found the State proved the first two aggravating circumstances beyond a reasonable doubt and, after carefully considering all of the evidence, sentenced Mahdi to death. (ROA 1810-26).

Direct Appeal

On direct appeal, Mahdi raised one issue:

> Did the trial judge improperly consider Mikal Mahdi's initial exercise of his constitutional right to a trial by jury in imposing a death sentence?

(ECF No. 31-1 at 3). On June 15, 2009, the South Carolina Supreme Court affirmed Mahdi's sentence. *See Mahdi v. State*, 678 S.E.2d 807 (S.C. 2009). (App. A000193).[3] Mahdi did not appeal this decision, but moved for a stay of execution in order to pursue post-conviction relief ("PCR"). On July 23, 2009, the South Carolina Supreme Court granted Mahdi's motion and assigned South Carolina Circuit Court Judge Doyet A. Early, III, to preside over Mahdi's PCR action.

First PCR Action

On August 18, 2009, Mahdi filed his initial PCR application *pro se*. (App. A000853-59). Through appointed counsel, Teresa Norris and Robert Lominack, Mahdi amended his application and raised the following grounds:

---

[3]The Appendix can be found at ECF Nos. 32-1 through 34-2.

10(a) *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution.*

11(a)(I) Trial counsel failed to object when the trial judge improperly based his decision to impose a death sentence on petitioner's assertion of his right to a jury trial, thereby effectively punishing him for exercising this constitutional right. Counsel's deficient performance in failing to preserve the issue for appellate review deprived petitioner of the right to effective assistance of counsel.

(ii) Counsel failed to adequately advise Applicant of the advantages of jury sentencing, which resulted in the Applicant pleading guilty and purporting to waive his right to jury sentencing.

(iii) Counsel failed to adequately investigate, develop, and present mitigation evidence concerning Applicant's family, social, institutional, and mental health history.

(iv) Counsel failed to assert that Applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.

(v) Counsel failed to assert that S.C. Code § 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea in violation of the Sixth, Eighth, and Fourteenth Amendments as addressed in *Ring v. Arizona*, 536 U.S. 584 (2002). Moreover, this statute forces a capital defendant to choose between his right to a jury trial and his right to present mitigating evidence, namely that he has accepted responsibility for the crime. While this issue has been rejected by state courts, *see State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004), it has not been reviewed by federal courts and counsel were thus ineffective in failing to adequately preserve the record for subsequent litigation.

Counsel's conduct in each instance separately and cumulatively was both unreasonable and prejudicial in sentencing. *Strickland v. Washington*, 466 U.S. 668 (1984); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008).

10(b) *Applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.*

11(b) At the time of the offenses, Applicant was developmentally impaired such that he had the "mental age" of a juvenile due to his atrocious background of

> deprivation, neglect, abuse, and institutionalization. The Cruel and Unusual Punishment Clause precludes the infliction of the death penalty upon him, just as it precludes execution of those under the age of 18 at the time of the offenses, because of these grave developmental deficits. *See Roper v. Simmons*, 543 U.S. 551 (2005).

(App. A000458-62) (emphasis in original).

From March 9th to 11th, 2011, the PCR court held an evidentiary hearing on Mahdi's application. (App. A001240-1960). After considering all of the evidence, the PCR court dismissed Mahdi's application. (App. A000011-58). In Ground 10(a)/11(a)(iii), the PCR court found trial counsel failed to conduct an adequate mitigation investigation, but that this deficiency did not prejudice Mahdi. The State moved to alter or amend that finding (*see* App. A000787-852); the PCR court heard argument on the State's motion (App. A001204-1232); and, on August 20, 2014, the PCR court filed an amended order of dismissal, finding trial counsel had adequately investigated potential mitigating evidence. (App. A000059-191 ("PCR Order")). On August 27, 2014, Mahdi moved to alter or amend the amended order (App. A000257-59), and the PCR court denied Mahdi's motion on September 9, 2014 (App. A000192).

PCR Appeal

Mahdi, through counsel Seth C. Farber, Brandon W. Duke, and Teresa L. Norris, appealed the PCR court's decision by filing a petition for a writ of certiorari to the South Carolina Supreme Court raising one issue:

> Was Petitioner denied the effective assistance of counsel at his capital sentencing proceeding by trial counsel's decision to rely entirely on a single expert witness to present mitigating evidence about petitioner's background instead of calling available lay witnesses who could have provided detailed and specific testimony in mitigation?

(ECF No. 31-18 at 5). On September 8, 2016, after full briefing by the parties, the Supreme Court of South Carolina denied the petition. (ECF No. 31-21). Remittitur issued on September 26, 2016.

(ECF No. 31-22).

Mahdi petitioned the United States Supreme Court for certiorari review of the South Carolina Supreme Court's decision, presenting virtually the same issue:

> Whether counsel in a capital sentencing proceeding can, consistent with this Court's holdings in *Williams v. Taylor*, 529 U.S. 362 (2000), and its progeny, properly rely exclusively on expert testimony and forgo calling available lay witnesses with detailed, firsthand information about mitigating circumstances in the defendant's background.

(ECF No. 51-1 at 2). The United States Supreme Court denied certiorari on February 21, 2017. (ECF No. 51-4).

Second PCR Action

On January 10, 2017, after filing the instant federal habeas petition, Mahdi through his federal habeas counsel filed a second PCR application, raising the following grounds:

> 10) Statement of grounds for relief:
>
> a) S.C. Code Ann. § 16-3-20, which requires a judge to sentence the defendant following a guilty plea, violates the Sixth Amendment of the United States Constitution, which is applicable to the states through the Fourteenth Amendment, because a judge rather than a jury finds facts required for imposition of a death sentence. *Hurst v. Florida*, __U.S.__, 136 S.Ct. 616 (2016).
>
> b) Mr. Mahdi was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial because his trial counsel advised him that the guilty plea would be considered as mitigation.
>
> c) Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Mr. Mahdi seeks an appeal on the following grounds for relief and supporting facts raised in his initial application for post-conviction relief (Case No. 2009-CP-09-164), as amended:
>
> - Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and

the Sixth and Fourteenth Amendments to the United States Constitution.

-- Trial counsel failed to object when the trial judge improperly based his decision to impose a death sentence on petitioner's assertion of his right to a jury trial, thereby effectively punishing him for exercising this constitutional right. Counsel's deficient performance in failing to preserve the issue for appellate review deprived petitioner of the right to effective assistance of counsel.

-- Counsel failed to adequately advise Applicant of the advantages of jury sentencing, which resulted in the Applicant pleading guilty and purporting to waive his right to jury sentencing.

-- Counsel failed to adequately investigate, develop, and present mitigation evidence concerning Applicant's family, social, institutional, and mental health history.

-- Counsel failed to assert that Applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.

-- Counsel failed to assert that S.C. Code Section 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea in violation of the Sixth, Eighth, and Fourteenth Amendments as addressed in *Ring v. Arizona*, 536 U.S. 584 (2002). Moreover, this statute forces a capital defendant to choose between his right to a jury trial and his right to present mitigating evidence, namely that he has accepted responsibility for the crime. While this issue has been rejected by state courts, *see State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004), it has not been reviewed by federal courts and counsel were thus ineffective in failing to adequately preserve the record for subsequent litigation.

■ Applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.

-- At the time of the offenses, Applicant was developmentally

> impaired such that he had the "mental age" of a juvenile due to his atrocious background of deprivation, neglect, abuse, and institutionalization. The Cruel and Unusual Punishment Clause precludes the infliction of the death penalty upon him, just as it precludes execution of those under the age of 18 at the time of the offenses, because of these grave developmental deficits. *See Roper v. Simmons*, 543 U.S. 551 (2005).

d) If the State contends that any of the grounds for relief identified in paragraph 10(c) were not ruled on by the initial post-conviction relief judge, then Mr. Mahdi seeks a ruling so that he may appeal.

(ECF No. 46-1 at 2-4).

The State responded to Mahdi's application, asserting that it should be dismissed as improperly successive and time barred. (*See* ECF No. 46-2). The second PCR court heard argument on the State's motion and, on June 29, 2017, dismissed Mahdi's application on procedural grounds. (ECF No. 66-1). Mahdi moved to alter or amend the court's order (ECF No. 103-6), and the court denied that motion (ECF No. 79-1).

Mahdi appealed the second PCR court's order. (ECF No. 103-8). On April 19, 2018, the South Carolina Supreme Court found Mahdi had failed to show an arguable basis for asserting the lower court's determination was improper and dismissed the matter. (ECF No. 126-1). Mahdi filed a petition for rehearing (ECF No. 135-1), which the South Carolina Supreme Court denied on June 27, 2018 (ECF No. 135-2). Remittitur issued the same day. (ECF No. 135-3).

Federal Habeas Corpus

On September 26, 2016, Mahdi filed this habeas petition under § 2255. (ECF No. 1). He filed an amended petition (the "Amended Petition") on September 7, 2017, raising the following grounds for relief:

I. Mr. Mahdi was denied his right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments when trial counsel failed to object to the State's use of full body restraints, both at the detention center and in the courtroom, when the restraints were an uncomfortable "torture" and "torment" at the detention center and would be highly visible to the jurors in the courtroom, in violation of *Deck v. Missouri*, 544 U.S. 622 (2005), thereby rendering Mr. Mahdi's guilty plea involuntary in violation of *Boykin v. Alabama*, 395 U.S. 238 (1969).

II. Mr. Mahdi was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution at the sentencing phase of his trial when trial counsel failed to adequately investigate, develop, and present mitigation evidence.

III. S.C. Code Ann. § 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea in violation of the Sixth and Fourteenth Amendments to the United States Constitution as addressed in *Hurst v. Florida*, __U.S.__, 136 S. Ct. 616 (2016), which is a new rule of constitutional law that applies retroactively to Mr. Mahdi's death sentence.

IV. Mr. Mahdi was denied his right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments when trial counsel failed to assert that S.C. Code Ann. § 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea in violation of the Sixth, Eighth, and Fourteenth Amendments as addressed in *Ring v. Arizona*, 536 U.S. 584 (2002).

V. Mr. Mahdi was denied his right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments when trial counsel failed to adequately advise him of the advantages of jury sentencing, which resulted in Mr. Mahdi pleading guilty and purporting to waive his right to jury sentencing.

VI. Mr. Mahdi was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments when trial counsel advised him that the guilty plea would be considered as mitigation.

VII. Mr. Mahdi was denied his right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments when trial counsel failed to object when the trial judge improperly based his decision to impose a death sentence on Mr. Mahdi's assertion of his right to a jury trial, thereby effectively punishing him for exercising this constitutional right.

(ECF No. 75 at 9-41).

APPLICABLE LAW

Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure states, as to a party who has moved for summary judgment:

> The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(a). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. When determining whether a genuine factual issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the nonmoving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. *Id.* at 324. Rather, the nonmoving party must identify specific, material facts that give rise to a triable issue of material fact. *Id.* Under this standard, the existence of a mere scintilla of evidence in support of the nonmovant's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Id.* at 248. "Only disputes over

facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* Further, Rule 56 provides in pertinent part:

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> > (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
> >
> > (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

Habeas Corpus

Because Mahdi filed the Petition after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), review of his claims is governed by 28 U.S.C. § 2254(d). *Lindh v. Murphy*, 521 U.S. 320 (1997); *Breard v. Pruett,* 134 F.3d 615 (4th Cir. 1998). Under the AEDPA, federal courts may not grant habeas corpus relief unless the underlying state adjudication

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

28 U.S.C. § 2254(d). "[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly

established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." *Williams v. Taylor*, 529 U.S. 362, 411 (2000). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision," and "even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Harrington v. Richter*, 562 U.S. 86, 101–02 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Moreover, state court factual determinations are presumed to be correct, and the petitioner has the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

Exhaustion & Procedural Bar

A habeas corpus petitioner may obtain relief in federal court only after he has exhausted his state court remedies. 28 U.S.C. § 2254(b)(1)(A). "To satisfy the exhaustion requirement, a habeas petitioner must present his claims to the state's highest court." *Matthews v. Evatt*, 105 F.3d 907, 911 (4th Cir. 1997), abrogated on other grounds by *United States v. Barnette*, 644 F.3d 192 (4th Cir. 2011); *see also In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases*, 471 S.E.2d 454, 454 (S.C. 1990) (holding that "when the claim has been presented to the Court of Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies"). To exhaust his available state court remedies, a petitioner must "fairly present[] to the state court both the operative facts and the controlling legal principles associated with each claim." *Longworth v. Ozmint*, 377 F.3d 437, 448 (4th Cir. 2004) (internal quotation marks and citation omitted). Thus, a federal court may consider only those issues which have been properly presented to the state appellate courts with jurisdiction to decide them. Generally, a federal habeas court should not review the merits of claims that would be found to be

procedurally defaulted (or barred) under independent and adequate state procedural rules. *Lawrence v. Branker*, 517 F.3d 700, 714 (4th Cir. 2008); *Longworth*, 377 F.3d 437; *see also Coleman v. Thompson*, 501 U.S. 722 (1991). For a procedurally defaulted claim to be properly considered by a federal habeas court, the petitioner must "demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman*, 501 U.S. at 750.

In South Carolina, a person in custody has two primary means of attacking the validity of his conviction: (1) through a direct appeal or (2) by filing an application for PCR. State law requires that all grounds for relief be stated in the direct appeal or PCR application. S.C. App. Ct. R. 203; S.C. Code Ann. § 17-27-90; *Blakeley v. Rabon*, 221 S.E.2d 767, 770 (S.C. 1976). If the PCR court fails to address a claim as required by S.C. Code Ann. § 17-27-80, counsel for the applicant must make a motion to alter or amend the judgment. S.C. R. Civ. P. 59(e). Failure to do so will result in the application of a procedural bar to that claim by the Supreme Court of South Carolina. *Marlar v. State*, 653 S.E.2d 266 (S.C. 2007).[4]

In addition, the Supreme Court of South Carolina will refuse to consider claims raised in a second appeal that could have been raised at an earlier time. *See* S.C. Code Ann. § 17-27-90; *Aice v. State*, 409 S.E.2d 392, 394 (S.C. 1991). Further, if a prisoner has failed to file a direct appeal or a PCR application and the deadlines for filing have passed, he is barred from proceeding in state

[4]In *Bostick v. Stevenson*, 589 F.3d 160 (4th Cir. 2009), the Fourth Circuit found that, prior to the Supreme Court of South Carolina's November 5, 2007 decision in *Marlar*, South Carolina courts had not uniformly and strictly enforced the failure to file a motion pursuant to Rule 59(e) as a procedural bar. 589 F.3d at 162-65. Accordingly, for matters in which there was a PCR ruling prior to November 5, 2007, the court will not consider any failure to raise issues pursuant to Rule 59(e) to effect a procedural bar.

court. S.C. App. Ct. R. 203(d)(3), 243. If the state courts have applied a procedural bar to a claim because of an earlier default in the state courts, the federal court honors that bar. *See Reed v. Ross*, 468 U.S. 1, 11 (1984); *see also Kornahrens v. Evatt*, 66 F.3d 1350, 1357 (4th Cir. 1995). As the United States Supreme Court explained:

> . . . [State procedural rules promote] not only the accuracy and efficiency of judicial decisions, but also the finality of those decisions, by forcing the defendant to litigate all of his claims together, as quickly after trial as the docket will allow, and while the attention of the appellate court is focused on his case.

Reed, 468 U.S. at 10-11.

Ineffective Assistance of Counsel

In *Strickland v. Washington*, the United States Supreme Court established that to challenge a conviction based on ineffective assistance of counsel, a prisoner must prove two elements: (1) his counsel was deficient in his representation and (2) he was prejudiced as a result. 466 U.S. 668, 687 (1984). To satisfy the first prong, a prisoner must show that "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. To satisfy the second prong, a prisoner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 692. The Court cautioned that "[j]udicial scrutiny of counsel's performance must be highly deferential," and "[b]ecause of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689.

In the specific context of a guilty plea, the prejudice prong of *Strickland* requires the prisoner to show that "there is a reasonable probability that, but for counsel's errors, [the prisoner] would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59

(1985). The Supreme Court further explained,

> In many guilty plea cases, the "prejudice" inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. . . . As we explained in *Strtickland v. Washington*, these predictions of the outcome at a possible trial, where necessary, should be made objectively, without regard for the "idiosyncrasies of the particular decisionmaker."

Hill, 474 U.S. at 59-60 (citations omitted).

When evaluating a habeas petition based on a claim of ineffective assistance of counsel, "[t]he pivotal question is whether the state court's application of the *Strickland* standard was unreasonable. This is different from asking whether defense counsel's performance fell below *Strickland*'s standard." *Richter*, 562 U.S. at 101. "A state court must be granted a deference and latitude that are not in operation when the case involves review under the *Strickland* standard itself." *Id.*; *see also Yarborough v. Gentry*, 540 U.S. at 6 (stating judicial review of counsel's performance is "doubly deferential when it is conducted through the lens of federal habeas"). If a state court decision questionably constitutes an unreasonable application of federal law, the "state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Richter*, 562 U.S. at 101 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Thus, in such situations, the habeas court must determine whether it is possible for fairminded jurists to disagree that the arguments or theories supporting the state court's decision are inconsistent with Supreme Court precedent. *Id.*

DISCUSSION

Before diving into the intricacies of the parties' substantive arguments, the court must address some preliminary matters raised in the briefs.

In his Response, Mahdi requests an evidentiary hearing under Rule 8 of the Rules Governing Section 2254 Cases in the United States District Courts on all of his habeas grounds. (ECF No. 113 at 2).[5] Under the AEDPA, evidentiary hearings are generally prohibited even when a habeas petitioner has failed to develop the factual basis of a claim in his state court proceedings. 28 U.S.C. § 2254(e)(2); *see Cullen v. Pinholster*, 563 U.S. 170, 181-84 (2011) (recognizing both that "review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits" and also that for claims for which the factual basis was not developed in state court "§ 2254(e)(2) bars a federal court from holding an evidentiary hearing, unless the applicant meets certain statutory requirements"). However, the statute itself creates an exception to the general rule if the petitioner can show that the claim relies on a new, retroactive rule of constitutional law or "a factual predicate that could not have been previously discovered through due diligence[,]" and that "the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." *Id.*

Thus, the Fourth Circuit has recognized:

> A petitioner who has diligently pursued his habeas corpus claim in state court is entitled to an evidentiary hearing in federal court, on facts not previously developed in the state court proceedings, if the facts alleged would entitle him to relief, and if

[5]Rule 8 states: "If the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted."

> he satisfies one of the six factors enumerated by the Supreme Court in *Townsend v. Sain*, 372 U.S. 293, 313 (1963).

Juniper v. Zook, 876 F.3d 551, 563 (4th Cir. 2017) (quoting *Conaway v. Polk*, 453 F.3d 567, 582 (4th Cir. 2006)). The six *Townsend* factors are:

> (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state-court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.

Townsend, 372 U.S. at 313. For the reasons that follow, the court finds Mahdi has failed to show he is entitled to an evidentiary hearing on any of his preserved claims under this standard. Mahdi has also requested a hearing on his defaulted claims, and the court will address those requests when it analyzes the merits of each related ground.

In addition, Mahdi has requested expansion of the record under Rule 7 of the Rules Governing Section 2254 Cases in the United States District Courts.[6] (ECF No. 113 at 2). Mahdi attached five extra-record exhibits to his Response—an affidavit from habeas counsel's mitigation investigator, emails from habeas counsel requesting a transcript from the second PCR hearing, a 2012 affidavit from PCR counsel regarding guilty pleas in capital cases, and affidavits from each PCR attorney regarding actions taken in PCR proceedings after the release of two Supreme Court decisions.[7] (ECF Nos. 113-1 through 113-5). Respondents oppose the court's consideration of the

---

[6]Rule 7 states: "If the petition is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the petition. The judge may require that these materials be authenticated."

[7]In addition, Mahdi noted he was "in the process of procuring affidavits from Mr. Mahdi and Mr. Mahdi's North Carolina counsel that [would] be consistent with, and support, the arguments and

attached affidavits[8] and have moved to strike those exhibits. (ECF No. 125). The court will address Mahdi's request to expand the record and Respondents' motion to strike in its discussion of the grounds to which they apply.

Finally, Mahdi contends the PCR court wrongfully "ced[ed] its factfinding authority to the State by" adopting, nearly wholesale, the State's proposed order, thus undercutting the reasonableness of the PCR court's factual determinations. (ECF No. 113 at 5-6). In federal habeas proceedings, a state court's factual determinations are presumed correct and the petitioner has the burden of rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). The Supreme Court has questioned a state court's factfinding procedures based on its verbatim adoption of one party's proposed order. *Jefferson v. Upton*, 560 U.S. 284, 292 (2010). However, in *Jefferson*, the state court solicited the proposed order ex parte, did not provide the opposing party an opportunity to criticize the order's findings or submit his own, and adopted findings that contained evidence not before the court. *See id.* at 294. And, the Court noted that although it had previously stated "that a court's 'verbatim adoption of findings of fact prepared by prevailing parties' should be treated as findings of the court," it had "also criticized that practice." *Id.* at 293-94 (quoting *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 572 (1985)).

In this case, the PCR court's initial order of dismissal included findings favorable to Mahdi.

---

factual background" in the Response and that he would file those affidavits once he received them. (ECF No. 113 at 2 n.1). However, no additional affidavits appear on the docket and Mahdi has not referenced any in later filings.

[8]Respondents express no opinion on Exhibit 2, habeas counsel's emails. (*See* ECF No. 125 at 1).

(*See* App. A000011-58). The State moved to alter or amend those findings and the PCR court held a hearing on the State's motion. At the end of the hearing, the PCR court directed the State to submit a proposed amended order of dismissal. The State submitted a 148-page proposed order, copying opposing counsel. (*See* App. A000616-783). Mahdi filed objections to the State's proposed order (App. A001012-23) and the PCR court ultimately issued its 133-page decision (App. A000059-190). This record suggests the PCR court considered both parties' arguments and reviewed and edited the State's order before adopting the majority of it. While adopting a party's proposed order is a disfavored practice, especially in a capital case, Mahdi has failed to show by clear and convincing evidence that the PCR court's factual findings are not entitled to a presumption of correctness.

GROUND ONE – THE SHACKLES

In Ground One, Mahdi asserts his trial counsel were ineffective for failing to object to the use of full body restraints both at the detention center and in the courtroom. (ECF No. 75 at 9-14). Mahdi contends the full body restraints were an unnecessary form of torture and torment and their use influenced his decision to plead guilty, thereby rendering his plea involuntary. (ECF No. 75 at 13). Respondents counter that the restraints were justified, and trial counsel had no basis for an objection because Mahdi told the trial court the restraints did not influence his plea. (ECF No. 104 at 37-42). This claim was not raised in state court and is, therefore, defaulted. However, Mahdi argues cause and prejudice under *Martinez v. Ryan*, 566 U.S. 1 (2012), asserting the ineffectiveness of his PCR counsel for failing to present this claim in his PCR application.

Inadequate assistance of counsel "at initial-review collateral review proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial," *id.* at 9, where:

> (1) the claim of "ineffective assistance of trial counsel" was a "substantial" claim; (2) the "cause" consisted of there being "no counsel" or only "ineffective" counsel during the state collateral review proceeding; (3) the state collateral review proceeding was the "initial" review proceeding in respect to the "ineffective-assistance-of-trial-counsel claim"; and (4) state law requires that an "ineffective assistance of trial counsel [claim] . . . be raised in an initial-review collateral proceeding."

Trevino v. Thaler, 564 U.S. 413, 423 (2013) (quoting *Martinez*, 566 U.S. at 14, 17-18).

Thus, Mahdi must "demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that . . . the claim has some merit," *Martinez*, 566 U.S. at 14 (comparing *Miller-El v. Cockrell*, 537 U.S. 322 (2003) (describing standards for certificates of appealability)), and that his PCR counsel were ineffective under *Strickland* for not raising that claim. As applied to guilty pleas, *Strickland*'s deficiency prong remains the same, but to prove prejudice, Mahdi must show that "there is a reasonable probability that, but for counsel's errors, [he] would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. at 59.

Mahdi began his court proceedings in leg braces, which were strapped onto his legs and locked into place, and worn under Mahdi's clothing. (App. A003540). However, after one day in the leg braces, Mahdi requested leg irons, which are described as "oversized handcuffs that fit around the ankles with a chain in between." (App. A003196, A003540). The sheriff discussed Mahdi's request with his attorneys and the court, and then switched Mahdi to leg irons. (App. A003540). Mahdi had no other restraints. (App. A003543).

After voir dire and related motions, outside the presence of the jury, Solicitor Pascoe informed the court the security team had found a handmade handcuff key in Mahdi's pocket. (App. A003194). Mahdi admitted to making the key at the detention center. (App. A003195, A003542-

43). He hid the key in his mouth and brought it to the courthouse on multiple days, but was unable to get the key from his mouth to his hand until he had a private meeting with his attorneys, outside the presence of deputies. (App. A003194-95, A003542). Security officers found the key during a search after that meeting and before Mahdi returned to the courtroom. (App. A003541). Mahdi admitted to trying to use the key to remove his leg irons.[9] (App. A003194, A003195). As a result, the sheriff recommended that the court consider securing Mahdi's hands, but indicated handcuffs would be visible if Mahdi placed his hands on top of the defense table. (App. A003195, A003196-97).

Judge Newman asked for input from both the solicitor and defense counsel. Solicitor Pascoe agreed with the sheriff and endorsed shackling Mahdi's hands and legs and using "any means possible to make sure the courthouse is secure." (App. A003195). Mr. Walters stated:

> Your Honor, certainly, we want to keep the public safe. And the events that have just occurred were just brought to my attention by the Sheriff. And, of course, I haven't conferred with my client to discuss exactly what he said to the Sheriff, but, evidently, they had a conversation.
>
> At this point, we would abide by any rulings of the Court. And I appreciate the Sheriff brought it to my attention and - - I was talking to the Solicitor and it was brought to our attention. And, certainly, I understand their position of putting it on the record. What more can be said.

(App. A003196).

Judge Newman then instructed the sheriff:

> Sheriff, at this point, I will certainly agree that security is imperative. . . .
>
> I believe that if you would use the leg irons, in addition to the chains, but, at this point, I would not want to have him shackled in the presence of the jury with his

[9]The sheriff tested the key that day and was able to open two out of three pairs of handcuffs. (App. A003543).

> shackles being visible due to the effect that it may have on his right to a fair trial. We'll step up the measures and if anything further happens, I'm sure you'll be on top of it and we can address it from there. Thank you very much.

(App. A003197). The court then brought the jurors back in and dismissed them for the night. (App. 3198-3200). After the jury's dismissal, in an ex parte meeting, Mr. Walters indicated Mahdi was considering pleading guilty, but wanted additional time to think about it and consult with his grandmother. (App. A003207-08). The next day, before the jury arrived, Mr. Walters indicated Mahdi wanted to plead guilty to all charges. (App. A003212). The court held a brief competency hearing (App. A003215-19), and then began the plea colloquy (App. A003219).

As part of the colloquy, the court asked Mahdi if he had any complaints about his lawyers, the solicitor, or any of the police officers involved in his case (App. A003229), prompting the following exchange:

> **DEFENDANT MAHDI**: I was kept in full body restraints all night last night. And I was told that I was going to be kept in full body restraints through the whole trial all day, all night, Your Honor. And that's my complaint.
>
> While I'm in a secure cell at the detention center, there is completely no need for me to be in full body restraints while in the cell. That's my only complaint, Your Honor.
>
> **THE COURT**: And has that fact had any bearing whatsoever on your decision to plead guilty?
>
> **DEFENDANT MAHDI**: I'd be lying if I said I didn't.
>
> **THE COURT**: Sir?
>
> **DEFENDANT MAHDI**: I'd be lying if I said it didn't.
>
> **THE COURT**: The fact that you have been placed in a full body restraint, has - -
>
> **DEFENDANT MAHDI**: All night.
>
> **THE COURT**: All night - -

DEFENDANT MAHDI: Yes, sir.

THE COURT: Has that caused you to decide to plead guilty?

DEFENDANT MAHDI: Your Honor, there wasn't no - - it wasn't a very, you know, very big reasons. It's a small like a slight diversion, you know.

THE COURT: A slight diversion?

DEFENDANT MAHDI: Yeah, a slight diversion, but it's not nothing - - it's nothing major. There was no major persuasive mood. It's mostly irritating, extremely irritating. And I felt it was unnecessary. I'm in a secure cell, a secure location and it's just a means to hassle me, that's what I felt it was.

THE COURT: Means to do what?

DEFENDANT MAHDI: It's a means to hassle me.

THE COURT: To hassle you?

DEFENDANT MAHDI: Yeah. Yes, sir, Your Honor. But I, in no way, feel that that, you know, it's almost petty, you know, it's childish to me that the director of the Orangeburg Detention Center will resort to that childish ways, you know.

Yeah, and I said that on television. The Orangeburg director of the detention center is childish. He resorted to childish ways, okay, Your Honor, and - - but in no way, did that persuade me to plead guilty. It's just irritating. And I feel that - - I feel that it was unnecessary, Your Honor. It was extremely unnecessary.

But as far as Calhoun County, they did not mistreat me. I was not coerced in any way by this county to plead guilty.

THE COURT: Do you wish to proceed with the guilty plea?

DEFENDANT MAHDI: Yes, Your Honor. I just felt it was necessary to mention that.

THE COURT: Are you, in fact, guilty of the charges against you.

DEFENDANT MAHDI: Yes, sir, Your Honor.

(App. 003229-31). Contrary to the record, Mahdi now contends that he pled guilty because of the

full body restraints.

Mahdi first contends that "[i]f trial counsel had objected pursuant to *Deck v. Missouri*, 544 U.S. 622 (2005), then the trial judge would have inquired further into the matter." (ECF No. 113 at 12). "[T]he Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial." *Deck*, 544 U.S. at 629. Here, after security discovered Mahdi's homemade key, Judge Newman reasonably determined that Mahdi should be more securely restrained. Thus, Judge Newman made a case-specific determination, on the record, because of a security problem and risk of escape, that shackling Mahdi was necessary. This is exactly the type of individualized security determination contemplated in *Deck*. *See id.* ("Such a determination may of course take into account the factors that courts have traditionally relied on in gauging potential security problems and the risk of escape at trial."); *id.* at 632 ("We do not underestimate the need to restrain dangerous defendants to prevent courtroom attacks, or the need to give trial courts latitude in making individualized security determinations. We are mindful of the tragedy that can result if judges are not able to protect themselves and their courtrooms."). However, Judge Newman also expressed his concern regarding Mahdi's due process rights and indicated he should not be shackled "in the presence of the jury." (App. A003197).

Judge Newman found Mahdi's escape plan justified "stepping up" Mahdi's restraints, but that those restraints should not be used in front of the jury. (*See* App. A003197 ("I believe that if you would use the leg irons, in addition to the chains, but, at this point, I would not want to have him shackled in the presence of the jury with his shackles being visible . . . .")). And, the record indicates

the potential jurors never saw Mahdi's restraints.[10] Trial counsel had no reason to object pursuant to the holding in *Deck*.[11]

Mahdi also argues that the use of full body restraints while at the detention center was intended to "hassle" Mahdi and caused him to plead guilty. (ECF Nos. 113 at 15-16). Mahdi contends that trial counsel should have objected on the ground that these enhanced security measures exceeded the scope of Judge' Newman's order, and requested another hearing to determine whether full body restraints were necessary at the detention center. (ECF No. 113 at 13, 16).

Even if trial counsel were somehow deficient, Mahdi has not offered any evidence, other than his own conclusory and self-serving statements, to establish that he would not have pled guilty if he had not been restrained. Mahdi has not shown any reason for this court to doubt his representation to Judge Newman made under oath during the plea colloquy that his restraints had no bearing on his decision to plead guilty. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("[T]he representations of the defendant . . . [during the plea hearing], as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). In addition, the record shows Mahdi began to consider pleading guilty before the ex parte meeting with Judge Newman, which was

---

[10]The court notes that Madhi's sentencing ultimately took place before Judge Newman, not a jury, which eliminates the risk that the jury could have inferred "that court authorities consider the offender a danger to the community." *Deck*, 544 U.S. at 633.

[11]Moreover, as even Mahdi has admitted, Judge Newman's ruling complied with *Deck*. (*See* ECF No. 113 at 15 ("[Judge Newman's] ruling, *if followed*, would have prevented a violation of *Deck*.") (emphasis in original)).

before he was fully restrained. Moreover, uncontested testimony from trial counsel during the PCR evidentiary hearing suggests Mahdi chose to plead guilty as a matter of trial strategy. (*See* App. A001921-23).

For these reasons, Mahdi's underlying claim of ineffective assistance of trial counsel lacks merit and Mahdi cannot excuse the procedural default of Ground One under *Martinez*. Accordingly, Mahdi is not entitled to relief on Ground One.[12]

GROUND TWO – MITIGATING EVIDENCE

In Ground Two, Mahdi alleges his trial counsel were ineffective in failing to adequately investigate, develop, and present mitigating evidence. (ECF No. 75 at 14-29). Mahdi raised this claim in his PCR application as Ground 10(a)/11(a)(iii) (*see* App. A000236) and the PCR court addressed this claim on the merits (App. A000085-181). The PCR Order divided Mahdi's claim into five different allegations of ineffective assistance of counsel: (1) Counsel should have interviewed and called at sentencing several of Mahdi's extended family members and also community members to testify to his family, social, scholastic, and mental health history; (2) Counsel should have presented the testimony PCR counsel presented at PCR through a different forensic social worker than the one counsel used at sentencing; (3) Counsel should have introduced testimony from an expert regarding the effect of Mahdi's life of incarceration on Mahdi; (4) Counsel failed to adequately investigate, develop, and present evidence concerning Mahdi's mental health history or

[12]In addition, because Mahdi has failed to show his underlying ineffective assistance of trial counsel claim is substantial or to properly allege facts that, if proven, would entitle him to relief, the court denies Mahdi's request for an evidentiary hearing on this ground. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief.").

mentality; and (5) Counsel failed to introduce certain documents at sentencing such as certain school records, Mahdi's DJJ records, records from Mahdi's commitment to the Walter Carter Center at age nine, and his father's records, and counsel failed to call school officials. (App. A000085-86).

On PCR appeal, Mahdi presented one question: Was Petitioner denied the effective assistance of counsel at his capital sentencing proceeding by trial counsel's decision to rely entirely on a single expert witness to present mitigating evidence about Petitioner's background instead of calling available lay witnesses who could have provided detailed and specific testimony in mitigation. (ECF No. 31-18 at 5). Accordingly, after a thorough review of Mahdi's petition for writ of certiorari (ECF No. 31-18), the State's return (ECF No. 31-19), and Mahdi's reply (ECF No. 31-20), the court finds the following allegation preserved and will address it under § 2254(d): trial counsel were ineffective in failing to investigate and present mitigating evidence from non-family lay witnesses.[13]

Mahdi did not raise the remaining claims in Ground Two in his PCR appeal. However, in his second PCR action, Mahdi sought to appeal this ground, as presented in his initial PCR application, pursuant to *Austin v. State*, 409 S.E.2d at 395.[14] (ECF No. 46-1 at 2-3). In finding Mahdi was not entitled to an *Austin* appeal, the second PCR court noted, "*Austin* is only applicable

---

[13]*See* Reply to Return to Petition for a Writ of Certiorari, ECF No. 31-20 at 5 ("Mahdi contends that the PCR court erred in denying his claim that available non-family members, *i.e.*, members of the community, including his former teachers, should have been called as witnesses.")

[14]In *Austin*, the state court denied petitioner's PCR application and PCR counsel failed to seek appellate review. 409 S.E.2d at 396. Petitioner filed a second application alleging only that his PCR counsel were ineffective for failing to appeal and that application was summarily dismissed. *Id.* On a petition for rehearing, the Supreme Court of South Carolina noted its previous recognition of a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR, found petitioner sufficiently stated a claim of ineffective assistance of counsel, and remanded for an evidentiary hearing. *Id.*

where the applicant wished to appeal from the denial of PCR but was denied the opportunity to seek appellate review or the right to appellate review of a previous PCR order was not knowingly and intelligently waived." (ECF No. 66-1 at 29). Neither of those situations was present in this case, where Mahdi "already had a full round of PCR remedies," *id.* at 10, and was represented on PCR appeal by qualified counsel. Further, the court stated ineffective assistance of PCR appellate counsel was not a recognized exception allowing a petitioner to file a second or successive PCR application. *Id.* at 29. Mahdi appealed that decision to the South Carolina Supreme Court, which dismissed his appeal and denied his petition for rehearing. (*See* ECF No. 126-1 (April 19, 2018, order dismissing appeal); ECF No. 135-2 (June 27, 2018, order denying petition for rehearing); ECF No. 135-3 (June 27, 2018, remittitur)).

Although the state courts denied Mahdi's second PCR application on procedural grounds, Mahdi has fairly presented his allegations to the state's highest court and has thus technically exhausted the remaining claims in Ground Two. However, because these claims were not properly preserved, they are procedurally barred. *See Matthews v. Evatt*, 105 F.3d 907, 915 (4th Cir. 1997), *abrogated on other grounds by United States v. Barnette*, 644 F.3d 907 (4th Cir. 2011). Mahdi asserts several arguments to overcome the procedural bar, all of which the court will address after it considers the preserved portion of Ground Two.

Under *Strickland*,

> [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes that particular investigation unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for

> reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

466 U.S. at 690-91. Thus, counsel must conduct a reasonable investigation, thorough enough to make an informed decision regarding which mitigating evidence to present. In assessing counsel's investigation, the court "must conduct an objective review of their performance, measured for 'reasonableness under prevailing professional norms,' which includes a context-dependent consideration of the challenged conduct as seen 'from counsel's perspective at the time.'" *Wiggins v. Smith*, 539 U.S. 510, 523 (2009) (quoting *Strickland*, 466 U.S. at 688, 689).

Further, to establish a Sixth Amendment violation, Mahdi "must show that but for his counsel's deficiency, there is a reasonable probability he would have received a different sentence." *Porter v. McCollum*, 558 U.S. 30, 41 (2009). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. To assess that probability, the court must "evaluate the totality of the evidence–'both that adduced at trial, and the evidence adduced in the habeas proceeding'–and 'reweig[h] it against the evidence in aggravation.'" *Porter*, 558 U.S. at 41(quoting *Williams v. Taylor*, 529 U.S. 362, 397-98 (2000)).

Relevant Background

The Evidence at Sentencing

The State presented an extensive case in aggravation, consisting of twenty-eight witnesses and an in-person visit to the crime scene. (*See* App. A003253-3579). The trial judge heard moving victim impact evidence from Captain Myers's wife, Amy Trip Myers (App. A003271-3301); father, Edward Myers (App. A003554-3562); daughter, Meredith Myers Firestone (App. A003562-3568); and several of his former co-workers and friends at the Orangeburg Department of Public Safety,

including Lieutenant William Alexander Cartwright, III (App. A003472-3475), Captain Michael Anthony Adams (App. A003476-3484), and Chief Wendell Davis (App. A003546-3553).

In addition, the State detailed Mahdi's history of trouble with law enforcement. Sheriff James R. Woodley, from Brunswick County, Virginia, described attempting to serve a juvenile detention order on Mahdi when he was fifteen years old. (App. A003302-3311). Mahdi had been convicted of breaking and entering in Mecklenburg County, North Carolina, and had failed to appear for sentencing. (App. A003304). When Sheriff Woodley approached Mahdi's house, Mahdi and his father locked themselves inside and refused to come out for approximately eight hours. (App. A003306). When Mahdi finally came out and the police had him in custody, fifteen-year-old Mahdi stated, "I'm going to kill a cop before I die." (App. A003307).

Mahdi then spent time at the Virginia Department of Juvenile Justice ("DJJ"). Linda Lee Coulson, a counselor at the DJJ Reception and Diagnostic Center for Children, evaluated Mahdi, and testified regarding her assessment. (App. A003311-28). In addition, the State admitted Ms. Coulson's evaluation into evidence. (App. A003314 (evaluation admitted); ROA 1867-75 (Coulson Evaluation)). In her evaluation, Ms. Coulson indicated Mahdi lived with his father, who was unemployed and reportedly had a criminal record for vandalism and escape. (ROA 1869). She stated Mahdi's mother was a nurse in Richmond, Virginia, and that Mahdi had infrequent contact with her, but denied that as a source of anxiety. *Id.* Ms. Coulson reported Mahdi's brother had joined Job Corps and was pursuing vocational training. *Id.* at 1869-70. Mahdi told Ms. Coulson he was closer to his brother than to any other family member. *Id.* at 1870.

Based on her conversations with Mahdi and information provided by the court and contained in his records, Ms. Coulson found Mahdi was "the product of a dysfunctional single parent family

characterized by a lack of involvement with his mother, an absence of a positive adult role model, instability, unemployment, and a lack of structure and supervision." *Id.* She went on to note:

> While Mikal advised that he and his father have a positive relationship, it appears that his father has placed little emphasis on supervision of Mikal, and has even provided a poor adult role model for his son. Information provided by the court and by Mikal would indicate that his father has made little attempt to reinforce Mikal's receiving an education, and his father refused to comply with court requests during Mikal's court involvement. Reports note that court workers were required to have a show cause issued in order to compel his father's cooperation. While Mikal claimed that he views his family as nurturing and supportive, it appears that Mikal has not been closely involved with either parent and has not been held accountable for his behavior. Mikal advised this counselor that his father showed minimal reaction when he learned that Mikal was involved with larceny of firearms.

Id. When Ms. Coulson asked Mahdi to describe himself, he stated he was "a quiet person who 'is always up to something'" and denied any strengths other than "'robbing people.'" *Id.*

In addition, while discussing previous charges and an attempt to escape from police, Mahdi indicated he did not "feel all that bad about stealing" and Ms. Coulson noted he "appeared to consider that attempting to escape was to be expected." (ROA 1873). Ms. Coulson stated that, while Mahdi admitted to his crimes, he viewed his commitment as unfair and "failed to accept complete responsibility for his behavior." *Id.* Based on his comments, Ms. Coulson concluded Mahdi had "no respect for the rights and property of others," was "without remorse," had "little empathy for the impact of his behavior upon others," and "did not appear to be motivated to avoid future court involvement." *Id.* In considering a placement recommendation, Ms. Coulson noted, during his time at the reception center, Mahdi had not adjusted well, had remained self-focused, bragged about the past, and exhibited aggressive behavior toward his peers. (ROA 1875). That aggressive behavior apparently included assaulting another youth at the facility. (App. A003317-18). Ms. Coulson recommended supportive services to provide more adequate structure and supervision

after his release and a highly structured environment while in state care, "where he could address the following issues: substance abuse services, values clarification, assertiveness training, self-esteem, family services, and problem solving skills." (ROA 1873-74).

The State also admitted into evidence portions of Mahdi's DJJ running case record. (App. A003489 (records admitted); ROA 2137-85 (DJJ record)). According to the record, Mahdi attended and participated in a weekly anger management group. (ROA 2137, 2138, 2139, 2140). However, Mahdi was expelled from the anger management group due to "aggressive and inappropriate behavior." (ROA 2141). When his counselor informed Mahdi he had been removed from the group, Mahdi threatened that if he was not released on time, he would "fuck people up and go around acting crazy." (ROA 2141). Counseling notes indicate, at some point, Mahdi was charged with attempting to assault a guard and was placed in isolation. (ROA 2139-40). He also made suicidal and homicidal threats. (ROA 2144-45). The record contains numerous references to Mahdi's refusal or inability to take responsibility for his actions. (ROA 2141 ("Mahdi stated that he is not responsible for his actions."), 2144 ("Mahdi fails to realize that he is responsible for his own actions."), 2145 ("It is this counselor's opinion that Mahdi is 'self-entitled' as he takes no responsibility for his own actions.")). The record also references concerned phone calls from Mahdi's father and grandmother. (ROA 2137, 2138, 2141-42, 2145-47). In one phone call, Mahdi's father accused the system of being prejudiced and trying to break Mahdi's spirit and stated "Virginia is full of white supremacists" (ROA 2146).

Officer Michael Koehler, with the Richmond City Police Department in Richmond, Virginia, also testified and described another incident that took place on November 23, 2000, when Mahdi was seventeen years old. (App. A003333-3346). Officer Koehler was dispatched to Mahdi's father's

house to serve a summons on Mahdi for slashing his mother's tires and to execute an outstanding detention order. (App. A003334). Mahdi got upset and Officer Koehler had to wrestle him to the ground. (App. A003335). While on the ground, Mahdi attempted to reach for another officer's gun. *Id.* Mahdi's father tried to intervene on his son's behalf and Officer Koehler had to pepper spray Mahdi and his father and use his asp baton on both to regain control of the situation. (App. A003335-36). After the officers detained him, Mahdi stated he slashed his mother's tires because she would not come to the door when he knocked, referred to her as a "crazy bitch," and said he should have killed her. (App. A003336-37). He also asked the officers to shoot him. (App. A003337).

Judge Newman also heard testimony from Moises Rivera, whom Mahdi almost stabbed to death in Richmond, Virginia, on April 17, 2001. (App. A003347-3359). Mr. Rivera was a maintenance supervisor at an apartment building in Richmond. (App. A003348-49). His supervisor asked him to see about a large group of young people behind one of the buildings. (App. A003349). On his way, he ran into Mahdi, who was looking into an apartment window. (App. A003349-50). Mr. Rivera asked Mahdi what he was doing and Mahdi jumped him. (App. A003350). Mahdi stabbed Mr. Rivera five times in the back and once in the arm and then ran away. *Id.* Rivera testified he actually died in the ambulance and had to be revived. (App. A003351). He suffered a punctured lung, had to be hospitalized for six days, and his pain and injuries kept him out of work for two months. (App. A003350-51). Mahdi was subsequently arrested and convicted of malicious wounding, a felony in Virginia. (App. A003361). He was sentenced to 180 months, with 141 months suspended, conditioned on a period of supervised probation up to fifteen years upon his release. (App. A003361-62). Mahdi was released on May 12, 2004. (App. A003362). His conditions of probation included not leaving Virginia; obeying all federal, state, and local laws; not using,

possessing, or distributing controlled substances; and not using, owning, possessing, transporting, or carrying any firearm. (App. A003363-64).

Amanda Jean Weaver, Mahdi's grandmother's next door neighbor, testified that shortly after his release, Mahdi told her he was selling marijuana. (App. A003376). Mahdi also, reportedly, asked Ms. Weaver to help him assemble a black nine millimeter handgun. (App. A003377). And, Mahdi stole Ms. Weaver's .380 semiautomatic pistol, which he eventually used in the series of crimes leading to his South Carolina conviction. (*See* App. A003379-80, A003468-72).

Judge Newman also heard testimony about the series of crimes that culminated in Captain Myers's murder and Mahdi's eventual capture in Florida. Michael S. Poe and Phillip Seats, officers in Winston-Salem, North Carolina, testified regarding their investigation of the murder of Christopher Jason Boggs, a cashier at an Exxon gas station, on July 15, 2004. (*See* App. A003443-66). A surveillance video showed Mahdi placing a forty ounce beer on the counter, shooting Mr. Boggs in the face, then getting on the counter, pointing his gun down at Mr. Boggs lying on the floor, and firing a second shot. (Test. of Michael S. Poe, App. A003447). The surveillance tape was admitted into evidence and played, in its entirety, for the court. (App. A003455-56). In addition, a fingerprint analysis and comparison expert matched the fingerprints at the scene to Mahdi's fingerprints (Test. of Phillip Seats, App. A003458-66), and a firearm analysis expert testified the gun used to kill Mr. Boggs was the same gun stolen from Ms. Weaver (Test. of Neal Morin, App. A003471).

Corey T. Pitts testified that Mahdi car-jacked him at gunpoint in downtown Columbia, South Carolina, on July 18, 2004. (App. A003406-07).

Stephen Curtis, an agent with the South Carolina State Law Enforcement Division ("SLED")

in Columbia, testified about responding to the Myers murder scene and going to Florida to process the truck Mahdi escaped in. (App. A003417-41). He described the scene and the condition of Captain Myers's body and identified crime scene photos for introduction into evidence. Dr. Janice Edwards Ross, the forensic pathology expert who performed Captain Myers's autopsy, described Captain Myers's body and gave her findings. (App. A003569-79). She testified that Captain Myers had nine gunshot wounds—three in his head, five in his chest and abdomen, and one in his hand. (App. A003573-74). Dr. Ross also found evidence that Captain Myers had been set on fire. (App. A003572).

Sargent Darren Frost, from the Satellite Beach, Florida, police department, testified about capturing Mahdi and taking him into custody. (App. A003253-3271). The police attempted to stop Mahdi for driving erratically, but he jumped out of the moving truck, dropped a fully loaded assault rifle, and fled to a nearby condominium complex. (App. A003255-64). Sargent Frost tracked Mahdi with a canine unit and, after some struggle, was able to detain him. (App. A003264-67). Once back at the station, Sargent Frost thanked Mahdi for dropping his gun and not shooting him. (App. A003270). Mahdi looked at him and said the selector was stuck on a three shot and he did not think he could shoot both officers and the dog. *Id.*

The State also presented evidence of Mahdi's behavior since his arrest. Mahdi was housed in Lee Correctional Institution in Bishopville, South Carolina, from July 2004 until June 17, 2005. On January 18, 2005, Mahdi was subject to a disciplinary hearing for striking Officer G. Tony. (Test. of Henry Lee Johnson, App. A003491-92). During the disciplinary hearing, Mahdi stated the next chance he got, he was going to "kill that mother fucking officer." (App. A003492). On February 9, 2005, officers left Mahdi alone in a conference room briefly after an interview. (Test.

of Wickliffe McPherson, App. A003497-98). When they returned and searched the room, the officers found that the cover to a wall socket had been removed and metal pieces were missing. (App. A003498). Officers searched Mahdi and found he had the metal pieces. (App. A003499). The officers then searched Mahdi's cell and found a rope made with sheets that was about fifteen feet long. (App. A003500). On March 10, 2005, a routine cell search turned up a thirteen foot long rope and pieces of metal. (Test. of Henry Lee Johnson, App. A003492-94). And on May 6, 2005, a routine cell search revealed hidden pieces of metal. (Test. of Terrance Prioleau, App. A003503-04).

On June 7, 2005, Mahdi submitted an inmate grievance form regarding the grievance coordinator's delayed response time. (Test. of Janet Driggers, App. A003508-09). The grievance form read: "I cannot be diplomatic with you people, so my last action would be to kill you. Why not? You're not good to anybody. I could easily get someone to murder you. What is wrong with you, bitch? I bet you'll respond quick to this, won't you? You people think this shit is a game." (App. A003509). Mahdi was charged with threatening to inflict harm on an employee. *Id.* At Mahdi's June 14, 2005 disciplinary hearing for this charge, he continued to threaten the grievance coordinator. (Test. of Annie Sellers, App. A003521-22). The hearing officer had to recess the hearing and remove Mahdi from the hearing room. (App. A003523-24). Even while being removed from the room and escorted down the hallway, Mahdi continued to make threats. (App. A003524). The State played a tape of this hearing for the court. (App. A003523).

Mahdi was transferred to Kirkland Correctional Institution in Columbia, South Carolina, shortly after this disciplinary hearing. Gary Lane, Captain at Kirkland, described the institution and two incidents with Mahdi. (App. A003526-38). Captain Lane testified that Kirkland gets the worst

of the worst inmates. (App. A003527). It is a fifty-bed maximum security institution where inmates are housed individually and are kept in full restraints and escorted by two officers at all times. *Id.* On March 29, 2006, officers discovered a hammer-like weapon in Mahdi's cell constructed of a piece of drain cover, two toothbrushes, a string from his mattress, and a paper form. (App. A003529-30). After this discovery, Captain Lane moved Mahdi to the High D Wing, where the six highest security risk inmates in Kirkland are housed, because he was concerned for his staff's safety. (App. A003528, A003531). In the High D Wing, the lights are kept on twenty four hours a day and there are cameras in every cell. (App. A003528). This is the most secure area within the South Carolina Department of Corrections ("SCDC"). (App. A003538). On May 19, 2006, Captain Lane noticed through surveillance footage that Mahdi had been spending time under an area where the televisions were kept. (App. A003531). He sent a team to Mahdi's cell and they found two pieces of metal, one sharpened to a point, and a piece of knotted rope. (App. A003533).

And, as discussed in Ground One, the trial court heard from Sheriff Thomas S. Summers, who was in charge of courthouse security for the trial, regarding Mahdi's homemade handcuff key. (App. A003538-3546). Sheriff Summers' testimony indicated Mahdi made the key while housed in High D Wing; requested Sheriff Summers switch his leg braces to leg irons, with which the key would more likely work; brought the key from his cell to the courthouse on multiple days, hidden in his mouth; and failed to use it only because courthouse security denied him the opportunity. (*See* App. A003539-43).

On cross-examination of the State's prison employee witnesses, trial counsel elicited testimony emphasizing that SCDC was well-equipped to handle each situation, finding contraband was fairly routine in a prison setting, and Mahdi had not escaped or used the contraband to hurt

anyone. (*See* App. A003502, A003505-06, A003534-37).

Trial counsel reinforced this idea by presenting James Aiken, an expert in prison adaptability. (*See* App. A003580-3615). Mr. Aiken testified that, in his expert opinion, SCDC had managed Mahdi "for several years in an adequate manner." (App. A003593). Regarding Mahdi's behavior and contraband infractions, Mr. Aiken said the severity of those infractions was reduced when considered in the context of the prison population and that such infractions were fairly routine in high security areas. (App. A003592-93). Mr. Aiken painted a picture of Mahdi as an immature boy with no backup in a prison full of violent predators and gangs. (App. A003596-97). He suggested Mahdi would be victimized and possibly resort to self-mutilation or suicide. (App. A003597). Mr. Aiken described the force continuum available to SCDC to control Mahdi's movements or punish bad behaviors. (App. A003598-601). Mr. Aiken concluded:

> Mr. Mahdi is an immature person that's done some terrible things in the community and as a result, he will remain in a prison environment for the rest of his life. And that prison system can adequately manage him with the type of security, technology, rules, regulations, training, physical structures, et cetera for the remainder of his life without causing an undue risk to staff, inmates, as well as the general public. And even if they deem it appropriate that they don't want to supervise him, there are other prison systems, such as the federal level, that can adequately manage any type of inmate.

(App. A003602)**.**

Defense counsel's only other witness was Marjorie Hammock, an expert in clinical social work, who conducted a biopsychosocial assessment. (*See* App. A003615-39). Ms. Hammock testified that to conduct her assessment she interviewed: Rose Burwell, Mahdi's paternal grandmother; Nathan Burwell, Mahdi's paternal uncle; Carson and Lawanda Burwell, Mahdi's

paternal uncle and aunt; Vera Mahdi, Mahdi's mother;[15] Corlis Ardis and Sophia Gee, Mahdi's maternal aunts; and an unnamed member of the community who did not know much about Mahdi.[16] (App. A003622-23). In addition, Ms. Hammock reviewed a synopsis of Mahdi's school records and a mental health report from his commitment to a mental health institution in Baltimore, Maryland. (App. A003623). Ms. Hammock presented her findings in a two page time line and a half page school experience summary, both of which were admitted into evidence. (*See* App. A003623 (time line admitted into evidence), A003630 (school experience summary admitted into evidence), A007543–44 (time line),[17] A007515 (school experience summary)).

Ms. Hammock testified that Mahdi's father, Shareef, was an extremely troubled child. (App.

---

[15]Vera is also referred to as "Tilea" throughout the record. Mahdi's father changed her name to Tilea when they married. (App. A004188). For ease of reference, the court will refer to her as Vera in this order.

[16]From Ms. Hammock's testimony at the sentencing and testimony from trial counsel's mitigation investigator offered at the PCR evidentiary hearing, it appears Ms. Hammock also interviewed Shareef Mahdi, Mahdi's father. (*See* App. A001805 (trial counsel's mitigation investigator testifying she and "a social work expert" traveled to Philadelphia, where Shareef was living at the time)).

[17]The time line admitted into evidence contains the following information not included in Ms. Hammock's oral testimony: "1975 Sareef [sic] involved in a series of misdemeanors locally all said to be racially motivated"; "1988 Vera (Tilea) is taken to Lawrenceville from Richmond by Sareef [sic] who abuses her. Nathan rescues Vera. Mikal and Saleem witness more abuse and violence"; "8/23/92 Mikal involuntary admission in a psychiatric facility after suicide threat/gesture and Mikal hospitalized Admission DX Axis I, Major Depression with suicidal ideation, adjustment disorder, R/O Adjustment Disorder, Axis II Developmental Reading Disorder, Axis III Hx of right arm and right leg fractures"; "10/19/92 Mikel [sic] discharged from Walter P. Carter Mental Health. Discharge DX Axis I Major Depression, Single Episode[.] Mikal also becomes more disruptive in his uncle's home in order to force his return to Lawrenceville to join his father and brother. He has become even more defiant after he learns that his brother has joined his father. The three reunite and live on Burwell property with the boys. This was an isolated place in the country and they often had no food, heat or money." The time line ends in April 2001, when Mahdi was transferred to the Virginia Department of Corrections. (App. A007544).

A003625). Shareef attended the local, formerly white, school shortly after desegregation and recalled being traumatized by the experience. (App. A003626). He was constantly in conflict with and alienated from those around him and considered himself unwanted. *Id.* Ms. Hammock stated there was alcoholism and neglect in Shareef's family. *Id.* Shareef was the only one of his siblings to not finish school; instead, he joined the Marines. *Id.* After he was discharged from the Marines, Shareef converted to Islam and changed his name. (App. A003626-27). He had odd jobs, but was not able to function well, struggled with depression, and had a number of incidents with local law enforcement. (App. A003627).

Shareef was twenty-seven and Vera was sixteen when they had an arranged marriage. *Id.* Ms. Hammock described the marriage as full of conflict, very unstable, and chaotic. *Id.* Shareef was unable to support his family and they moved several times, eventually living with Mahdi's grandmother in Lawrenceville, Virginia. *Id.* Ms. Hammock testified Mahdi and his older brother, Saleem, witnessed a "great deal of conflict" between their mother and father and that, when Mahdi was four or five, Vera left the family to "get away from the abuse." (App. A003627-28).

After Vera left, Shareef struggled to take care of the boys. (App. A003628). Mahdi's grandmother tried to help, but she and Shareef had a very confrontational relationship. *Id.* At some point, Shareef forced Vera to return to Lawrenceville from Richmond. *Id.* Ms. Hammock testified Vera returned "ostensibly to see the boys, but that result[ed] in, again, some physical conflict. And she le[ft] again not to see her son for a number of years." *Id.*

Ms. Hammock stated Mahdi had difficulty in school. *Id.* He was considered bright, but did not perform well, was a poor reader, and struggled with his self-esteem. (App. A003628-29).

In 1991, Shareef sent Mahdi to live with his aunt and uncle, Carson and Lawanda Burwell,

in Baltimore, Maryland. (App. A003629). Carson and Lawanda described Mahdi as a bright and energetic young boy, but very, very troubled and indicated he had difficulty in school. *Id.* Carson told Ms. Hammock that Mahdi could not read at all when he came to live with them. *Id.*

Regarding Mahdi's education, Ms. Hammock listed the schools he attended[18] and summarized parts of his records from second and third grade. (App. A003630-32). In second grade, records indicate Mahdi had uneven skills—he was placed in an average math program, but a below average reading program—and needed improvement in his standards for behavior and showing respect for authority. (App. A003631). In third grade, Mahdi was outstanding in science, but below average in reading, vocabulary, and spelling. (App. A003631-32). The records also indicate Mahdi struggled with self-esteem and had difficulty with relationships with others. (App. A003632). Ms. Hammock also noted Mahdi's education was disrupted several times by moves and, ultimately, by his father removing Mahdi from school in order to homeschool him. *Id.*

Ms. Hammock testified Vera was very withdrawn, did not want to participate in the interview, and seemed frightened of being involved with the family again. (App. A003632-33). Vera and others described Vera's abusive relationship with Shareef, but Ms. Hammock did not relate any specifics. (*See* App. A003633). Mahdi lived with Vera for a short time when he was released

[18]She testified Mahdi began kindergarten at Sister Clara Muhammad School in Richmond, Virginia, but also attended kindergarten at Totaro Elementary School in Lawrenceville, Virginia. (App. A003630-31). She stated records were not available, or were not legible, from Sister Clara and there were not narrative records from Totaro. (App. A003631). Mahdi then started first grade at Chamberlayne Elementary School in Richmond, Virginia. *Id.* Ms. Hammock stated records were not available from Chamberlayne either. *Id.* Then, Mahdi was sent to Baltimore, Maryland, where he attended Scotts Branch Elementary for second and third grade. *Id.* According to the school experience summary, Mahdi attended Totaro Elementary for fourth grade and part of fifth grade, until Shareef removed him in order to homeschool him. (App. A007515). The experience summary also indicates Mahdi did not appear motivated in fourth grade and his potential was stifled. *Id.*

from DJJ. Ms. Hammock described this as "not a good reunion," said Vera and Mahdi "did not get along at all," and Vera said she and Mahdi "had very different kinds of ideas about his living with her." (App. A003634).

Ms. Hammock testified Mahdi's child development was greatly impacted by his father's inability to properly parent. (App. A003635). Mahdi's childhood was marked by conflict, chaos, and a lack of stability. (App. A003636-37). During adolescence, Mahdi was exposed to his father's outbursts and problems, including his conflicts with his own family, the community, and law enforcement. (App. A003637). She stated that more than anything, Mahdi wanted an intact family and an ongoing relationship, but he never received consistent help from his mother or father in growing up and developing good skills and a sense of values. *Id.* Ms. Hammock opined Mahdi had suffered emotional trauma throughout his early life, which "had an impact on his inability to make good choices, to have a good sense of himself and others and to behave according to societal norms." (App. A003638). She stated Mahdi had the following risk factors: abuse and neglect; abandonment; lack of proper socialization; poor self-esteem; poor history of school progress; and poor sense of himself. *Id.*

Ms. Hammock concluded:

> [S]omeone who is neglected, was abandoned, who suffers from poor parenting is likely to end up in a situation where he's out of control and he does damage to himself and others. This is - - we find this profile all too frequently in people who end up in this kind of situation. He never had really a chance to develop appropriately.

(App. A003638-39).

In addition to these two witnesses, it appears trial counsel intended to call Mahdi's grandmother, who was present in the courtroom, but, after speaking with her during a break, counsel

did not call her and, instead, rested. (*See* App. A003639).

The Sentencing Order

Judge Newman read his twelve page sentencing order into the record. (*See* App. A003686-3702). After reciting the facts, Judge Newman found the State had proven the existence of two aggravating circumstances beyond a reasonable doubt, thus allowing him to consider the death penalty. (App. A003691). Judge Newman then considered the nonstatutory aggravating circumstance of Mahdi's prior and subsequent bad acts, which were "relevant to show his bad character, evil nature, and malignant heart," and found the State had established Mahdi's bad character and propensities by clear and convincing evidence. (App. A003692-95). Judge Newman considered the mitigating circumstances argued by the defense and any mitigating circumstances supported by the evidence, including Mahdi's youth, "turbulent and transient childhood and upbringing," prison adaptability, and acceptance of responsibility through pleading guilty. (App. A003695-99). Judge Newman found none of these mitigating circumstances deserving of significant weight. (App. A003696-99). Judge Newman also considered victim impact evidence. (App. A003699).

In sentencing Mahdi to death, Judge Newman stated:

> My challenge and my commitment throughout my judicial career has been to temper justice with mercy and to seek to find the humanity in every defendant that I sentence. That sense of humanity seems not to exist in Mikal Deen Mahdi.
>
> . . . .
>
> Today, the defendant also seeks mercy, the same mercy that perhaps Captain James E. Myers sought for an instant before Mikal Deen Mahdi fired nine bullets into Captain Myers' body from one of Captain Myers' prized weapons before setting his body on fire with matches and diesel fuel belonging to Captain Myers. In extinguishing the life, hope and dreams of Captain Myers in such a wicked, depraved

> and consciousless manner, the defendant, Mikal Deen Mahdi, also extinguished any justifiable claim to receive the mercy he seeks from this Court.

(App. A003700-01).

The Evidence at PCR

Mahdi's PCR counsel presented an extensive and thorough account of Mahdi's background, including his family history, upbringing, mental health, and incarcerations. Counsel presented five family members. Carson Burwell, Mahdi's paternal uncle, and his wife, Lawanda Burwell, provided insight into Mahdi's time spent in Brunswick County, Virginia, and Lawrenceville in particular. (*See* App. A001260-61, A001481). They testified regarding the Burwell family's background and history, including their racial views and family tensions. (*See* App. A001262-66, A001269-70, A001484-85, A001487-89). Carson described his upbringing and how he and Shareef related to their parents, how Shareef changed after attending a desegregated school, Shareef's marriage to Vera, and Shareef's parenting of Mahdi and Saleem. (*See* App. A001267-82). Both also testified regarding the period of time when Mahdi lived with them in Baltimore, Maryland. (*See* App. A001282-92, A001494-1513). Lawanda, who has a doctorate in maternal child health from the Harvard School of Public Health, described Mahdi's emotional issues around learning and how they were attempting to overcome the gaps in his education. (*See* App. A001499-1503).

Both Lawanda and Carson recounted Mahdi's abuse allegation against Lawanda in August 1992 when he was approximately ten years old. (App. A001286-92, A001503-08). After a spanking from Lawanda, Mahdi put soot from the fireplace and ketchup on himself to give the appearance of severe injuries and called the police. At some point, Mahdi asked one of the responding officers for his gun so he could shoot himself and was immediately taken to the Walter Carter Center, a mental

health facility, where he was admitted for around sixty days. After Mahdi was released, Carson and Lawanda continued to take him to counseling for several months, but he would not participate in the therapy and seemed to be doing well at that time, so they stopped. Lawanda testified at the end of third grade, Mahdi was in a good place. (App. A001508). But, that summer, Mahdi discovered Saleem had moved back in with Shareef and he wanted to be with his father and brother, so he began acting out again. When Mahdi returned to Lawrenceville to live with his father, Shareef was not in any better condition to take care of the boys than he had been when Carson took Mahdi and sent Saleem to Texas. (App. A001514). Carson did not recall ever being interviewed by Mahdi's defense team and stated he definitely would have testified had he been asked. (App. A001294-95). Lawanda remembered being interviewed by Ms. Hammock and Paige Tarr, the defense team's mitigation investigator, but she was not asked to testify. (App. A001514). She stated she was not sure she would have agreed to testify if they had asked, but maybe she could have been convinced. (App. A001515).

Sandra Wynn Burwell, who was married to Mahdi's uncle, Nathan Burwell, Jr., from 1972 to 1983, and grew up in Brunswick County, provided an affidavit. Her affidavit also discussed the Burwell family, Shareef's background, and Shareef's relationship with Vera. (App. A004154-55). She provided more information on Vera and the end of Shareef and Vera's relationship. (App. A004155). According to Sandra, while living with Shareef and raising the boys, Vera managed to get her GED and complete a nursing program at a junior college. *Id.* She then convinced Shareef, who was unemployed, that she should join the military. *Id.* When she returned home from the military, she informed Shareef she wanted a divorce and was taking the boys. *Id.* Shareef would not allow that and Vera left without her sons. Shareef repeatedly told Mahdi and Saleem their mother

abandoned them and did not love them. *Id.* Sandra attended the hearing when Mahdi was first sent to DJJ after the stand-off with police. *Id.* She stated the failure to report was not Mahdi's fault, Shareef would not let her visit Mahdi in jail, and she felt so sorry for Mahdi that she considered adopting him. *Id.*

Mahdi's maternal aunts, Rose M. Gupton and Sophia A. Gee, testified regarding Vera's childhood, background, relationship with Shareef, and what she was like as a mother. (*See* Rose M. Gupton Test., App. A001316-30; Sophia A. Gee Test., App. A001331-47). In addition, when Mahdi was a teenager, he would periodically come by Sophia's house. (App. A001339). She stated Mahdi was always nice to her and was "a loving, respectable, typical teenager." *Id.* Rose stated nobody from the defense team ever contacted her and she did not know Mahdi had been arrested for murder until he was convicted. (App. A001327-28). Rose indicated she would have testified at Mahdi's sentencing if asked because he deserved mercy and never had a chance. (App. A001328). Sophia, and her sister, Corliss, were interviewed by the defense team. (App. A001341-42). However, the defense team did not ask Sophia how to get in touch with other family members or to testify on Mahdi's behalf. (App. A001342-43). Sophia said she would have testified if asked because Mahdi's parents failed him from the beginning. (App. A001343).

In addition, PCR counsel presented evidence from seven community witnesses, including three of Mahdi's teachers. In third grade, after he was released from the Walter Carter Center, Mahdi's school placed him in Myra R. Harris's class. (App. A001348-49). Ms. Harris testified her class contained the troubled kids, or the kids who had not been successful in other classrooms. (App. A001349-50). She said, initially, Mahdi was withdrawn and not friendly, but she was able to draw him out by listening to him and giving him a voice. (App. A001351-52). He had some discipline

problems in other classrooms, but not in hers. (App. A001351). He had a lot of trouble with homework and struggled with change and transitions. (App. A001354-55). By the end of the school year, Mahdi would give Ms. Harris hugs, was smiling, had some friends, and was just like the rest of the kids. (App. A001353, 1356). He had performed well academically and even received two awards: outstanding achievement in art and a certificate for academic achievement. (App. A001358-59). Ms. Harris did not know Mahdi had been sentenced to death until she was contacted by PCR counsel. (App. A001359). She stated she would have testified at his sentencing if asked. (App. A001360).

For most of fourth grade, Mahdi returned to Totaro Elementary School in Lawrenceville, where Dora G. Wynn was the principal. Ms. Wynn submitted an affidavit and stated Mahdi had emotional difficulties, was frequently brought to her office, was withdrawn, had trust issues, refused to do his work or eat, and would, on occasion, simply walk away from school. (App. A004146). During his fourth grade year, Mahdi was recommended for placement in special education. *Id.*

Carol E. Wilson was chair of the child study team that evaluated Mahdi for special education placement and also Mahdi's fifth grade teacher. (App. A001367-68). Ms. Wilson testified that, in order to assess Mahdi's eligibility for special education, a team conducted a full child study, including a psychological evaluation, educational diagnostics, recommendation from a guidance counselor, and classroom observations. (App. A001368). After the assessments were complete, the team held an eligibility meeting to discuss their findings. (App. A001370-71). Ms. Wilson recalled Shareef attended that meeting, but cursed at everyone and stormed out when Mr. Vecker began reading his psychological findings. (App. A001371). Mr. Vecker was Caucasian and Shareef said he did not want any white man writing negative reports about his son. *Id.*

Ms. Wilson reviewed each section of the report from the assessment meeting. On the Burks Rating Scale, a behavior assessment, Mahdi scored "very significant [with] excessive self-blame, poor impulse control, and excessive resistance." (App. A001373). He also exhibited periods of extreme sadness. (App. A001373). Ms. Wilson concluded that he appeared to be unable to cope with his self-esteem problems and that made Mahdi unable to function and effectively learn in school. (App. A001373-74). On the medical portion, Mahdi was noted to be overweight and anemic. (App. A001374-75). Psychologically, Mahdi had a full scale IQ of 118, but testing showed psychological blocking and characteristics of children who present academic problems, particularly in language arts. (App. A001375). Mr. Vecker found Mahdi's projectives revealed depressive and victimization themes, feelings of helplessness, withdrawal, denial, and lack of self-esteem. (App. A001375-76). Ultimately, the team found Mahdi eligible for the emotionally disabled program and recommended he continue counseling and receive assistance in reading. (App. A001379).

Shareef eventually signed Mahdi's individual education program and Mahdi entered Ms. Wilson's special education class in fifth grade. (App. A001381). Ms. Wilson recalled Mahdi was never disrespectful, but was depressed and very sad. (App. A001382). He liked to draw and would draw black and white pictures of people hanging. (App. A001383). Ms. Wilson described Mahdi as flat and lacking in joy, interest, or motivation. (App. A001384). He was quiet and had little interaction with other students, but he was not a behavior problem. *Id.*

While Mahdi was in the fourth and fifth grades, Shareef was working as a substitute teacher in the Brunswick County school system. (*See* App. A001383; Wynn Aff., App. A004146). While substituting in a fifth grade class, Shareef told the girls to get fitted for birth control, use condoms, and to not have illegitimate children or get on welfare. (App. A001386). The school system fired

Shareef and he withdrew Mahdi, supposedly to homeschool him. *Id.* After that, Mahdi "fell through the cracks." *Id.*

When asked if she was surprised Mahdi had been charged with murder, Ms. Wilson responded, "with everything the way that it was going and with his father, I couldn't expect anything else." (App. A001387). She testified that she was never contacted by trial counsel, but would have testified and asked the judge for mercy if given the chance. (App. A001388).

The remainder of the community witness testimony focused on Shareef. George R. Smith, who managed the blacks-only swimming pool in Lawrenceville for a time, remembered Shareef bringing Saleem and Mahdi to the pool almost every day when the boys were young. (App. A001408). Shareef was clean-cut at the time and there was nothing particularly remarkable about him and the boys. (App. A001408-09). Then, in the 1980s, Mr. Smith won a voting rights case against Brunswick County and became known as a civil rights activist. (App. A001409). After that, Shareef admired Mr. Smith and would periodically contact him. *Id.* Mr. Smith testified Shareef hated white people "with a passion" and recalled him speaking approvingly of Hitler killing "those Jews." (App. A001410). Mr. Smith did not think Shareef had a job and believed Mahdi's grandmother was supporting the boys. (App. A001411-12).

Mr. Smith also described an incident where Shareef jumped into the whites-only swimming pool and refused to get out. (App. A001412-15). The sheriff's office called Mr. Smith to assist and he drove to the pool. (App. A001412). When he arrived, Shareef was swimming around, using vile language, and talking about why O.J. Simpson had killed Nicole Brown Simpson. (App. A001412-13). Shareef eventually agreed to come out of the pool, but only if Mr. Smith walked between him and the officers the 100 yards to the sheriff's office. (App. A001414). Mr. Smith and the officers

agreed, and everyone walked to the sheriff's office, which is also where the jail was located. (App. A001414-15). Mr. Smith went into the cell with Shareef. (App. A0014150). According to Mr. Smith, once Shareef was locked in the cell, "he just went wild," throwing chairs against the wall and breaking tables. *Id.* Mr. Smith said it was "just as violent as anything [he] ha[d] ever seen in [his] life," and he left. *Id.*

Mr. Smith also accompanied Shareef to Mahdi's hearing after the stand-off with police. (App. A001416). He remembered the judge commenting that Mahdi was a smart kid and his problem was his father. (App. A001417). The defense team did not contact Mr. Smith. (App. A001415). He stated that if asked, he would have testified and probably would have asked the judge for mercy because of the "rampant rumors about what was going on in that household." (A001415-16).

Sharon C. Pond, a psychologist at Brunswick Behavioral Health Center, testified regarding any records she could find related to Mahdi and Shareef.[19] (App. A001419-23). Mahdi's intake was on February 24, 1994, and his case was closed on September 14, 1994. (App. A001420). Shareef was seen as a mental health outpatient on March 4, 1994, discharged on May 16, 1994, seen for emergency services on July 9, 1994, and his case was closed on September 1, 1994. (App. A001421). Ms. Pond did not have a clear personal recollection of Shareef, but would have directly supervised whomever worked with him. (App. A001422). She testified that, after the pool incident, the sheriff's office called one of her emergency workers to assess Shareef. (App. A001422-23). The emergency worker found Shareef had a mental illness and was imminently dangerous to himself or

[19]The detailed records had been purged due to age, so she only had "face sheets" with each person's personal data and dates and circumstances of contact. (*See* App. A001419-20).

others. (*See* App. A001423). That assessment resulted in Shareef's involuntary commitment to Central State Hospital Forensic Unit. *Id.*

Ms. Pond stated Nancy Burwell, Mahdi's grandmother, was on the community services board of the Brunswick Behavioral Health Center at the time of Shareef's commitment. (App. A001423). Nancy spoke with Ms. Pond regarding Shareef's problems and blamed herself for involving him in the movement to integrate the public schools. (App. A001423-24). Nancy felt, although it was the right thing to do civically and morally, it was the absolute wrong thing to do for Shareef and the experience left him very damaged and hurt. *Id.* Mahdi's defense team did not contact Ms. Pond. (App. A001424).

Douglas R. Pond, Ms. Pond's husband, current mayor of Lawrenceville, and former chief of police, also submitted an affidavit. (App. A004148). Mr. Pond grew up with Shareef and remembered him as a fairly normal child. *Id.* However, Mr. Pond stated that after his conversion to Islam, Shareef became eccentric and radicalized. *Id.* Shareef did not like white people and there was a racial overtone to his statements and actions. *Id.* Mr. Pond was the chief of police at the time of the pool incident and remembered Shareef saying things like "come on, white boy," when officers would ask him to get out of the pool. *Id.* Mr. Pond also stated he knew Nancy Burwell from the community and that she had always been "eccentric and somewhat goofy" and routinely got confused about when her water bill was due. *Id.* Mahdi's defense team did not contact Mr. Pond, but he stated he would have been willing to testify or provide the above information. *Id.*

Finally, James R. Woodley, former Sheriff of Brunswick County, who testified for the State during Mahdi's sentencing, provided an affidavit on Mahdi's behalf in his PCR proceeding. (App. A004149-51). Mr. Woodley grew up with the Burwells and, while he did not know Shareef as well

as the older children, he remembered him as easy going and relatively normal until he began attending an integrated school. (App. A004149). Mr. Woodley described Nancy Burwell as someone with "all the lights [] on, but nobody's home." *Id.* He indicated Shareef had always seemed dominant and domineering and had no respect for women. *Id.* Mr. Woodley testified that he remembered one time Nancy told him that Shareef had beaten her with a belt buckle while Saleem and Mahdi watched. *Id.* Nancy wanted Shareef to get help, so Mr. Woodley arrested him and referred him for mental health treatment. *Id.* After the mental health evaluation, Shareef returned to jail, where no charges were filed because Nancy would not testify. (App. A004149-50).

Mr. Woodley also filled in details about what happened when Shareef attempted to force Vera to return to Lawrenceville. (App. A004150). Shareef took Saleem and Mahdi to visit their mother, told Vera they would all go get ice cream, and, once she was in the truck, told her he was taking her back to Lawrenceville to kill her. *Id.* When they returned to Lawrenceville, the boys went into the house with Nancy and another female relative and Shareef and Vera remained outside. *Id.* Nancy and the boys heard screaming and ran outside to see Shareef trying to kill Vera. *Id.* Vera managed to escape, but later declined to press charges, saying she wanted to put the incident, Shareef, and the boys behind her. *Id.*

Mr. Woodley recalled incidents where Shareef threw a brick at his sister, Kathy, and damaged his sister Loretta's car. *Id.* He stated he personally complained to the Brunswick County Department of Social Services and the school board when he realized Shareef was not actually homeschooling the boys, but nothing ever came of it. *Id.* And finally, Mr. Woodley described Shareef's standoff with police in connection with the public pool incident and attached a related article from the local paper. (App. A004150-51). He indicated Mahdi's defense team did not

interview him and he was surprised Nancy was the only family member present at the trial. (App. A004151).

PCR counsel also called four experts: Dr. Nicholas C. Cooper-Lewter, Dr. Craig Haney, Dr. DeRosset Myers, Jr., and Dr. Donna M. Schwartz-Watts. Dr. Cooper-Lewter, an expert in clinical social work and psycho-social assessment, performed a new psycho-social assessment. (App. A001426-77, 1537-92). Dr. Cooper-Lewter's testimony followed the same format as Ms. Hammock's, but illuminated in greater detail Mahdi's childhood, traumas, education, mental health, and general history, which had been provided by the other PCR witnesses.

Dr. Haney, an expert in social psychology, testified regarding the likely effects on Mahdi of his extensive time in prisons. (App. A001592-1655). Based on his review of Mahdi's records, Dr. Haney testified that Mahdi "was institutionalized for approximately eight and a half out of every 10 days of his life after the age of 14," amounting to about eighty-six percent of his life. (App. A001608). Dr. Haney described similar risk factors in DJJ to those Mahdi experienced in his early life, including: abandonment, neglect, witnessing violence, instability, and unpredictability. (App. A001609). He indicated that, in order to avoid victimization in an institution, people who have been hurt by these experiences will project or develop a tough, angry exterior. (App. A001610). Dr. Haney attributed Mahdi's "maladaptive" and "impulsive" behavior in DJJ to this form of self-preservation (App. A001611-12) and opined Mahdi left DJJ "with the same problems arguably worsened by the fact that he had been in this institutional setting and had developed in part as a way of trying to adjust in this setting an even more defiant and oppositional approach to conflict and to interactions" (App. A001618).

Regarding Mahdi's time in adult prison in Virginia, Dr. Haney testified that the prison system

failed to address Mahdi's underlying psychological problems. (App. A001620). Dr. Haney stated untreated underlying psychological problems can often lead inmates to rack up disciplinary infractions for minor irrational and impulsive behaviors, and those infractions result in time in isolation or a transfer to a super-max facility. (App. A001621). Dr. Haney described studies suggesting prisoners subjected to extended solitary confinement can experience anxiety and mental deterioration and "lose their ability to initiate behavior or make responsible judgments about their own behavior." (App. A001623-24). In addition, Dr. Haney stated "[i]f a prisoner suffers from depression that depression almost certainly will deepen inside a super-max prison." (App. A001624). And the frustrating nature of the environment and lack of "pro-social avenues for the release of that frustration" can lead prisoners in super-max facilities to lash our impulsively and irrationally. (App. A001624-25). Dr. Haney opined these factors significantly contributed to Mahdi's institutional behavior and that, after his time at the super-max facility in Virginia, without a transitional process or psychiatric treatment, Mahdi would have had a very difficult time reentering free society. (App. A001630-33).

Dr. Myers, an expert in child and adolescent psychology, assessed developmental issues in the first sixteen to seventeen years of Mahdi's life. (App. A001656-97). Dr. Myers reviewed Mahdi's records and portions of the trial transcript and found Mahdi suffered from major depression and severe attachment disorder in his childhood and adolescence. (App. A001659-60). In discussing Mahdi's records from the Walter Carter Center, Dr. Myers noted it was very unusual for a nine year old to be admitted to a psychiatric ward and rare for someone that young to receive a diagnosis of major depression. (App. A001665-66, 1668). Dr. Myers testified Mahdi's Walter Carter Center records, special education eligibility assessment, and DJJ psychological evaluation consistently

suggested Mahdi's oppositional behavior stemmed from his major depression. (*See* App. A001682, A001684, A001690-91). He noted that a number of people along the way recognized that Mahdi needed help and made cogent recommendations, but Mahdi never received the ongoing support he needed. (App. A001691-92).

Dr. Schwartz-Watts, a forensic psychiatrist, evaluated Mahdi and diagnosed him with: (1) major depression, recurrent, with psychotic features, in remission; (2) anxiety disorder; (3) reactive attachment disorder of childhood, inhibited type; (4) paranoid personality disorder; and (5) antisocial personality disorder. (App. A001700). Dr. Schwartz-Watts opined that Mahdi's depression could have manifested as aggression and irritability (App. A001701-02) and linked her diagnoses of depression and antisocial personality disorder (App. A001705-06). In her report, Dr. Schwartz-Watts concluded Mahdi's age and mentality at the time of the crime were mitigating factors, based on the fact that he was twenty-one when he committed the crime and documentation suggesting his emotional immaturity. (App. A006972). However, at the evidentiary hearing, she testified that despite the presence of mental illnesses, Mahdi's capacity was not diminished at the time of the crime, he was able to know right from wrong, and she did not believe his mentality supported a statutory mitigating circumstance. (App. A001713-14). However, she stated his anxiety disorder could have contributed to his decision to shoot Captain Myers. (App. A001714). Dr. Schwartz-Watts also testified that Mahdi expressed remorse to her, indicating: "he said it was unnecessary to kill the man and he felt very badly about it and the other thing that he said [was that] killing someone is selfish and it shows a lack of discipline." (App. A001715).

The State then presented testimony from Mahdi's trial attorneys and defense team, which included: James Gordon, the private investigator (App. A001742-47); Paige M. Haas, the mitigation

investigator (App. A001800-26); Dr. Thomas V. Martin, the forensic psychiatrist (App. A001747-84); and Dr. Geoffrey R. McKee, the forensic psychologist (App. A001784-1800). The attorneys and investigators testified regarding the investigation, sharing information in periodic team meetings, consulting with the attorneys assigned to Mahdi's North Carolina murder case, and personal interactions with uncooperative family members and potential witnesses. Dr. Martin discussed his findings that Mahdi had a violent outlook, expressed no remorse, and was manipulative. (App. A001755-56).[20] Those findings led Dr. Martin to diagnose Mahdi with antisocial personality disorder. (App. A001756) Dr. McKee agreed and diagnosed Mahdi with antisocial personality disorder with a history of alcohol abuse. (App. A001790). Both doctors indicated none of the information they heard or reviewed during the evidentiary hearing would have changed their opinions and, in fact, the DJJ records, which they had not previously reviewed, were consistent with their diagnoses. (App. A001783-84, A001799-1800).

Analysis

Non-Family Lay Witnesses

In this preserved portion of Ground Two, Mahdi asserts his trial counsel were ineffective in failing to contact and present evidence from community lay witnesses, specifically: Mahdi's teachers, Myra Harris and Carol Wilson; elementary school principal, Dora Wynn; and community members who knew the Burwell family—George Smith, Sharon Pond, James Woodley, and Douglas Pond. To succeed on this claim, Mahdi must show that the PCR court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law," as determined by the

[20]Mahdi told Dr. Martin that his actions were "justified" and that "people only understand force." (App. A001761).

United States Supreme Court, 28 U.S.C. § 2254(d)(1), or "was based on an unreasonable determination of the facts in light of the evidence" before it, 28 U.S.C. § 2254(d)(2).

In reaching its conclusions, the PCR court applied *Strickland*, *Wiggins v. Smith*, 539 U.S. 510 (2003), *Rompilla v. Beard*, 545 U.S. 374 (2005), their progeny, and their South Carolina state law equivalents. (*See* App. A000086-90, A000166-67). The PCR court found Mahdi had "not shown that counsel was deficient in failing to investigate, develop, or present mitigation evidence from his family members or community witnesses" and that trial counsel "conducted a reasonable and thorough mitigation investigation and presented what mitigation they could that was favorable to Mahdi at the time of the sentencing proceeding." (App. A000118). The court concluded "Mahdi ha[d] failed to demonstrate deficient performance here because much, if not all, of the evidence Mahdi offered at PCR regarding his family and social history, whether through family or community witnesses, was cumulative to the evidence presented in Mahdi's capital sentencing proceeding." (App. A000114, A000165 (specifically noting Judge Newman knew all the pertinent information about Mahdi's father)). And, the PCR Order included a specific finding that trial counsel were not ineffective for not calling elementary school officials. (App. A000154).

After a thorough review of the aggravating and mitigating evidence (App. A000166-81), the PCR court also found Mahdi had failed to prove prejudice (App. A000181). Given the "horrible facts of the murder" and the "overwhelming" evidence of Mahdi's bad character, characteristics, prison misconduct, and propensities for violence, the PCR court found there was "no reasonable probability Judge Newman would have returned with a different sentence" if presented with the additional mitigating evidence at PCR. (App. A000166, A000167).

Mahdi alleges two specific errors regarding the PCR court's determination: (1) the PCR court

erred by rejecting the application of the *American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (2003) ("ABA Guidelines") and (2) the PCR court erred in finding the mitigation evidence offered in PCR was cumulative to the evidence offered at sentencing.[21] (ECF No. 113 at 39 n.13, 43-45). The ABA Guidelines state that: "capital counsel must investigate a client's social history; locate and interview all potential witnesses; locate available and relevant records; and investigate and rebut the Government's evidence in aggravation," and that "[b]ecause the sentencer in a capital case must consider in mitigation, anything in the life of a defendant which might militate against the appropriateness of the death penalty for that defendant, penalty phase preparation requires extensive and generally unparalleled investigation into personal and family history." (ECF No. 113 at 39) (citing ABA Guidelines 10.7 and 10.11 and 10.6 Commentary).

In the PCR court's original order, in addition to applicable case law, the court considered the ABA Guidelines in assessing reasonable performance. (*See* App. A000039-45). Under this analysis,

[21]Mahdi also alleges the following errors in the PCR Order: (1) the PCR court erred in finding trial counsel made a reasonable strategic decision not to present certain mitigating evidence in order to avoid the admission of additional evidence in aggravation and (2) the PCR court made erroneous credibility determinations. (ECF No. 113 at 39, 42). However, the PCR court's finding that trial counsel made an objectively reasonable strategic decision pertained to counsel's decision not to call Mahdi's family members as mitigation witnesses, specifically Carson Burwell, Lawanda Burwell, and Sophia Gee. (*See* App. A000115-17). Accordingly, the propriety of that finding is not relevant to this portion of Ground Two. In addition, it does not appear the PCR court made specific credibility determinations regarding the non-family lay witnesses. (*See* App. A000110-14 (finding: witnesses' present statements about previous willingness to testify not credible; Mahdi's aunts and uncles were not willing to come to South Carolina and testify on Mahdi's behalf in 2006; the record showed Mahdi had engaged in conduct within his own family which would have caused, and did cause, family members to be reluctant to assist him in his mitigation case; and counsel and the defense team attempted to develop live mitigation evidence from Mahdi's family, but were met with reluctance, refusal, or inability to testify in a helpful manner)). Thus, the PCR court's credibility findings do not directly impact the court's consideration of this portion of Ground Two.

the PCR court found trial counsel deficient for failing to interview potential witnesses outside of Mahdi's family. (App. A000047). However, given the aggravating circumstances in this case, the court found Mahdi had failed to show prejudice. *Id.*

In the amended PCR Order, the PCR court carefully and expressly reconsidered the applicability of the ABA Guidelines. (*See* App. A000087-90). Notably, the PCR court did not find the guidelines inapplicable or irrelevant, but cited case law indicating the ABA Guidelines are just that—guidelines—and reiterating the ultimate deficiency determination turns on the much broader concept of reasonableness. (*See* App. A000088-89) (citing *Bobby v. Van Hook*, 558 U.S. 4 (2009); *Cullen v. Pinholster*, 131 S.Ct. 1388 (2011)). While the United States Supreme Court has looked to the ABA Guidelines in analyzing attorney performance under similar circumstances,[22] there is no requirement that courts are bound to follow the ABA Guidelines or must grant the guidelines any weight. *See Van Hook*, 558 U.S. at 7-8. As Justice Alito noted in his concurring opinion in *Van Hook*, the ABA is a private group with limited membership, and "[i]t is the responsibility of the courts to determine the nature of the work that a defense attorney must do in a capital case in order to meet the obligations imposed by the Constitution," and there is therefore "no reason why the ABA Guidelines should be given a privileged position in making that determination." *Van Hook*, 558 U.S. at 13 (Alito, J. concurring). Thus, the PCR court's decision not to base its analysis on the advisory ABA guidelines was not contrary to clearly established federal law.

In support of his argument that the PCR court erred in finding the PCR evidence cumulative of the sentencing evidence, Mahdi asserts: (1) even if the information was the same, receiving the information through family and lay-witness first-hand accounts is more impactful than through

[22] *See, e.g, Strickland*, 466 U.S. at 688; *Wiggins*, 539 U.S. at 510; *Rompilla*, 545 U.S. at 387.

expert testimony; (2) the information presented at the PCR proceedings was not cumulative; and (3) the inclusion of testimony from school teachers and community members during the PCR proceedings succeeded in humanizing Mahdi, something Judge Newman specifically found the presentation at sentencing had failed to do. (ECF No. 113 at 43-45).

First, this preserved portion of Ground Two only concerns counsel's alleged failure to develop and present evidence from non-family lay witnesses and does not address the decision to present mitigating evidence through an expert, rather than a series of character witnesses. Accordingly, the court declines to dive into a discussion of best practices in capital sentencing, at least at this point.

Second, the court has thoroughly reviewed the testimony and exhibits offered at sentencing and in the PCR proceedings and finds the PCR court's determination that the PCR evidence was cumulative is not unreasonable. While the PCR evidence certainly expanded on and added depth to Ms. Hammock's testimony and the other evidence offered at sentencing, it would not have significantly "altered the sentencing profile presented to the sentencing judge." *Strickland*, 466 U.S. at 700. As discussed above, the school and community PCR witnesses testified about Mahdi's behavior and performance in school; special education evaluation; father's background, racial views, mental health, and incidents of violence against other family members and racial protests; and grandmother Nancy Burwell's occasionally off-kilter behavior.

At sentencing, Ms. Hammock testified regarding Mahdi's education, noting that Mahdi's education was disrupted several times, he had trouble reading, he suffered from poor self-esteem, and he struggled to relate to others. (App. A003630-32). Ms. Hammock's School Experience

Summary indicated Mahdi attended special reading classes and qualified for Chapter 1[23] while in school in Baltimore. (App. A007515). In addition, Ms. Hammock's School Experience Summary noted that, in fifth grade, Mahdi's father "removed [him] in order to home school." *Id.*[24] Ms. Hammock also noted, in third grade, Mahdi was outstanding in science and worked well in small groups. *Id.* Overall, though concise and lacking the detail presented at the PCR hearing, Judge Newman had before him the same basic information presented by Mahdi's teachers.[25]

In addition, while Ms. Hammock's description of Shareef's background was brief, she did note the trauma he experienced while attending a desegregated school, his depression, a number of incidents with local law enforcement, and his physical abuse of Vera. (App. A003625-28). The time line admitted into evidence reinforced Ms. Hammock's testimony and provided additional details. (*See* App. A007543-44). The time line revealed that Shareef was described as a disturbed young child, that his mother was not emotionally available to him, and that he was involved in incidents

---

[23]This refers to Chapter 1 of the Educational Consolidation Improvement Act, which provided federal funding for supplementary programs in basic skills for low-income students who qualified based on achievement.

[24]The following sentence is incomplete, but states, "There was no information that this schooling had." (App. A007515). Through the benefit of hindsight, the court assumes Ms. Hammock meant to state there was no information that Shareef ever actually homeschooled Mahdi.

[25]One notable exception is Mahdi's special education evaluation. The evaluation, detailed by Carol Wilson during the PCR evidentiary hearing, was not discussed at trial. Based on evidence at PCR, it is questionable whether trial counsel had seen the evaluation. However, trial counsel's mitigation investigator testified her common practice was to request records from every school a defendant attended and pass those records on to counsel. (App. A001803). She also testified that, in this case, she summarized Mahdi's school records and presented relevant information to counsel and other experts during their periodic team meetings. (App. A001813, A001825-26). Notably, counsel's possession of the special education evaluation is not specifically contested in the briefs, is not covered by this portion of Ground Two, and is not material to the court's evaluation of Mahdi's claims.

with law enforcement, which were "said to be racially motivated." (App. A007543). The time line also described Shareef kidnapping Vera and physically abusing her in front of Mahdi and Saleem and stated Shareef attacked his mother, Nancy. (App. A007543-44). In addition, Ms. Coulson's DJJ evaluation, which the State admitted into evidence during the sentencing phase, described Shareef as a poor adult role model and attributed much of Mahdi's apparent behavioral problems to Shareef's dysfunctional parenting. (ROA 1870). And the portion of Mahdi's DJJ records the State admitted into evidence references Shareef's statement that "Virginia is full of white supremacists." (ROA 2146). Thus, while trial counsel's mitigation presentation was brief, the court cannot find unreasonable the PCR court's determination that the evidence at PCR on these topics was cumulative.

In addition, the record suggests trial counsel considered calling Nancy Burwell to testify during sentencing. (*See* App. A003639, A001859-60). Counsel could, quite reasonably, have decided not to present information suggesting this character witness had some quirks. The decisions concerning the calling of witnesses are matters of strategy left to the attorney, which ordinarily cannot constitute ineffective assistance. *Jones v. Barnes*, 463 U.S. 745, 808 (1983).

Further, to Mahdi's broad challenge to the PCR court's finding that trial counsel conducted a reasonable investigation, despite not interviewing the teachers and community witnesses presented at PCR, the court does not find that decision contrary to, or an unreasonable application of, clearly established federal law or based on an unreasonable determination of the facts.

The record shows trial counsel assembled a team of qualified experts to assist in Mahdi's defense and specifically to investigate potential mitigating evidence. Members of the team traveled to Lawrenceville, Virginia; Richmond, Virginia; Baltimore, Maryland; and Philadelphia,

Pennsylvania. (App. A001805-06). They interviewed Mahdi and several of his family members, including: Nancy; Mahdi's uncle, Nathaniel; Vera; Shareef; Mahdi's maternal aunts, Corliss Artis and Sophia Gee; Carson and Lawanda Burwell; and Mahdi's paternal aunt, Kathy. (App. A001806-08). And, the team consulted with Mahdi's North Carolina attorneys and their mitigation investigator, who had already spent time gathering information from Mahdi's family. (App. A001808). In addition, Paige Haas, the team's mitigation investigator, testified that she attempted to speak with Saleem, but was not successful. (App. A001809).

The attorneys and experts had periodic team meetings where everyone would share information. (*See* App. A001834-35). And, after meeting with Mahdi's North Carolina defense team, Mahdi's attorney, Carl Grant, moved to continue Mahdi's South Carolina trial for almost one year. (App. A001836-37). Mr. Grant stated after talking with the North Carolina team, he "discovered that there was going to be a whole lot more information that [he] would need in order to adequately present Mahdi's case," primarily regarding Mahdi's background and family. (App. A001836). Judge Newman granted the motion and continued the trial from January to November 2006. (App. A007968-69).

Further, Ms. Haas testified she visited Mahdi's elementary school in Lawrenceville and spoke with teachers there. (App. A001824-25). She indicated the teachers she spoke with remembered Mahdi and were familiar with him, but they had not spent "lots and lots of time" with him. (App. A001825). Ms. Haas also spoke by phone with individuals from Madhi's school in Baltimore. *Id.* And, she recalled requesting records from several schools and testified it was her common practice to request records from any school she knew the defendant attended. (App. A001803-04). Ms. Haas stated she would have made notes from her interactions, including names and contact information,

passed on those notes to the attorneys, and included any pertinent information in a school record summary she prepared for Ms. Hammock. (App. A001813, A001825-26).[26]

When asked why he did not talk with community members or teachers, Mahdi's attorney, Mr. Walters, stated he normally relied on a defendant's family to identify other potential witnesses. (App. A001877). However, in this case, Mahdi's family was not helpful. *Id.* In addition, by Mahdi's own admission, and confirmed by his records, Mahdi was somewhat dysfunctional within the school system. (App. A001876). So, Mr. Walters stated he was not under the impression that witnesses from Mahdi's schools would testify favorably, or would not be subject to harmful cross-examination. (App. A001876-77). Mr. Walters also emphasized his reliance on the qualified experts on his team. (*See* App. A001874, A001876, A001886).

It is not unreasonable or against prevailing professional norms for counsel to rely on a qualified mitigation investigator and other experts. *See Rhodes v. Hall*, 582 F.3d 1273, 1283 (11th Cir. 2009) ("Since . . . counsel hired investigators who interviewed potential witnesses and shared all of their information with counsel, we cannot say that counsel performed deficiently by delegating the mitigation investigation to them."). In addition, as the Supreme Court has recognized, "there comes a point at which [more evidence] can reasonably be expected to be only cumulative, and the search for it distractive from more important duties." *Van Hook*, 558 U.S. at 11; *see also Rompilla*, 545 U.S. at 389 ("Questioning a few more family members and searching for old records can promise less than looking for a needle in a haystack, when a lawyer truly has reason to doubt there is any needle there."). Thus, trial counsel are not required to "investigate every conceivable line of

[26]Ms. Haas's notes reflected an interview with a Ms. Pearson, whom she thought must have been one of Mahdi's teachers. (App. A001806).

mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing," *Wiggins*, 539 U.S. at 533, but, rather, must uphold their "duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary," *Strickland*, 466 U.S. at 691.

Based on the court's review of the evidence and relevant precedent, and as evidenced by the PCR court's reversal of its position on this issue after reconsideration, the court finds "fairminded jurists could disagree" that the record here supports the PCR court's conclusion. *See Richter*, 562 U.S. at 101. However, the PCR court's decision does not "lie well outside the boundaries of permissible difference of opinion." *See Tice v. Johnson*, 647 F.3d 87, 108 (4th Cir. 2011) (holding "[m]indful of the deference owed under AEDPA, we will not discern an unreasonable application of federal law unless 'the state court's decision lies well outside the boundaries of permissible differences of opinion.'") (quoting *Goodman v. Bertrand*, 467 F.3d 1022, 1028 (7th Cir. 2006)). Accordingly, granting the PCR court the appropriate latitude and deference, the court finds Mahdi has not shown the PCR court's determination was contrary to, or an unreasonable application of, clearly established federal law or based on an unreasonable determination of the facts. *See id.* at 105 ("The standards created by *Strickland* and § 2254(d) are both 'highly deferential,' and when the two apply in tandem, review is 'doubly' so.") (citations omitted).

Other Allegations of Deficiency

As discussed above, Mahdi did not raise the remaining portions of Ground Two in his PCR appeal, but did raise them in his second PCR application. Thus, they are technically exhausted, but procedurally defaulted. Mahdi advances six theories to overcome the procedural default: (1) the issue presented in Mahdi's state certiorari petition encompasses all of Ground Two; (2) new

information discovered during federal habeas counsel's investigation has fundamentally altered Ground Two; (3) cause and prejudice under *Martinez*; (4) the court should excuse the default because PCR appellate counsel were required to brief all arguable issues; (5) ineffective assistance of PCR appellate counsel; and (6) failure to hear his claims would constitute a fundamental miscarriage of justice. (*See* ECF No. 113 at 45–52).

The court has already found that Mahdi's state petition for a writ of certiorari presented a narrower claim than presented here and the court has addressed that claim. Accordingly, Mahdi's first argument fails. Mahdi's fourth argument, that PCR appellate counsel were required to brief all arguable issues, relies entirely on state law (*see* ECF No. 113 at 50-51) and has now been denied by the state courts (*see* ECF No. 66-1). Accordingly, it is not a cognizable federal habeas claim. *See Wilson v. Corcoran*, 562 U.S. 1, 5 (2010) ("[I]t is only noncompliance with federal law that renders a State's criminal judgment susceptible to collateral attack in the federal courts."); *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, law, or treaties of the United States.") (citations omitted).

Regarding Mahdi's fifth argument, the *Martinez* exception does not cover claims of ineffective assistance of PCR appellate counsel. *See Martinez*, 566 U.S. at 16 (expressly declining to "extend [its holding] to attorney errors in any proceeding beyond the first occasion the State allows a prisoner to raise a claim of ineffective assistance at trial"); *Davila v. Davis*, ___ U.S. ___, 137 S. Ct. 2058, 2065 (2017) ("Petitioner asks us to extend *Martinez* to allow a federal court to hear a substantial, but procedurally defaulted, claim of ineffective assistance of appellate counsel when

a prisoner's state postconviction counsel provides ineffective assistance by failing to raise that claim. We decline to do so.").

And, the court is unpersuaded by Mahdi's sixth argument, that failure to hear his claims would constitute a fundamental miscarriage of justice, which he advances in one sentence in a footnote. (*See* ECF No. 113 at 49 n.15). A fundamental miscarriage of justice requires a showing that Mahdi is actually innocent. *See Murray v. Carrier*, 477 U.S. 478, 496 (1986). Here, Mahdi pled guilty and, other than this conclusory sentence in a footnote, has not asserted his innocence.

Cause and Prejudice under *Martinez v. Ryan*

Pursuant to *Martinez*, Mahdi claims he can show cause to excuse the procedural default because his PCR counsel were ineffective for failing to investigate certain evidence uncovered by federal habeas counsel, namely: (1) Mahdi's race-based trauma; (2) Mahdi's physical abuse by his father; (3) Mahdi's father's mental illness and admissions to instilling violence in his children; (4) Mahdi's attempts to get his life together during the summer of 2004, before committing the instant offenses; and (5) Mahdi's grandmother's letters to North Carolina counsel, suggesting South Carolina trial counsel were not engaging with her. (ECF No. 113 at 49-50).

To support his argument, Mahdi offers the affidavit of Samuel Wiita Dworkin, federal habeas counsel's mitigation investigator. (*See* ECF No. 113-1). In their reply and motion to strike, Respondents argue the court cannot properly consider this affidavit under § 2254(e)(2).[27] (*See* ECF

[27] 28 U.S.C. § 2254(e)(2) states:

> If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that - -
>
> (A) the claim relies on - -

No. 123 at 5-9; ECF No. 125 at 1-6). Respondents also note that *Martinez* "does not directly provide the authority for a petitioner to expand the record in order to further develop facts that could have been presented in the state court proceedings." (ECF No. 125 at 5-6 (quoting *Fielder v. Stevenson*, No. 2:12-cv-412-JMC, 2013 WL 593657, at *6 (D.S.C. Feb. 14, 2013)).

Respondents are correct that "[s]ection 2254(e)(2) sets limits on a petitioner's ability to expand the record in a federal habeas proceeding. . . . However, courts have held that § 2254(e)(2) does not similarly constrain the court's discretion to expand the record to establish cause and prejudice to excuse a petitioner's procedural defaults." *Fielder*, No. 2:12-cv-412-JMC, 2013 WL 593657, at *3 (citing *Cristin v. Brennan*, 281 F.3d 404, 416 (3d Cir. 2002)). Thus, where a petitioner relies on *Martinez* to show cause and prejudice, a court may find additional evidentiary development necessary to adequately consider whether PCR counsel were deficient and whether prejudice resulted from the errors and may exercise its discretion to expand the record to consider new evidence in that context. The court finds this is one of those cases and grants Mahdi's request to expand the record with respect to Mr. Dworkin's affidavit.[28] The court notes, however, its consideration of the affidavit extends solely to its evaluation of Mahdi's assertion of cause and prejudice.

> (I) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
>
> (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

[28]Consequently, the court denies Respondents' motion to strike (ECF No. 125) as to this exhibit.

Race-Based Trauma

In his affidavit, Mr. Dworkin states his investigation revealed "significant race-based trauma and a racial history story that is a core component of mitigation in [Mahdi's] case, including knowing who [Mahdi] is, where he comes from, and how the experiences of his, and his family's, past directly form mitigating information." (ECF No. 113-1 at 2). Mr. Dworkin's affidavit goes on to describe Mahdi's lineage, descending from a relationship between a slave and slave-owner; mention prominent family members; and discuss the family's roots in an area of pre-Civil War Virginia that experienced racially-motivated violence. *Id.* at 2-3. Mr. Dworkin suggests Mahdi's prominent familial history, "and the burden that that carries, likely made [Mahdi's] 'fall' so much more devastating" and that Mahdi's father's mental illness, and resulting damage to Mahdi, could be seen in Mahdi's pain at watching his cousins go on to college and become successful. *Id.* at 3-4.

Mr. Dworkin indicates race-based trauma can result in stress reactions, including suicidal ideation. *Id.* at 9. In addition, he avers that race-based trauma can have implications for an individual's behavior toward authority, something Mr. Dworkin suggests would be worth exploring in this case involving the murder of a white officer by a younger person of color.[29] (ECF No. 113-1 at 9). Mr. Dworkin states all of Mahdi's family history was readily available to trial and PCR counsel, but was not developed or investigated. (ECF No. 113-1 at 2).

---

[29]The court notes, as Judge Newman found, that the State had not proven beyond a reasonable doubt that Captain Myers's murder stemmed from his job as a police officer. In fact, evidence at PCR suggested Mahdi did not know Captain Myers was a police officer until he got into Captain Myers's truck, after the murder. (*See, e.g,* App. A001759 ("[Mahdi] said he realized [Captain Myers] was a police officer when he got in the individual's vehicle that he took from the cabin and he could see it was an unmarked police vehicle.")). In addition, the court notes nothing in the record suggests Mahdi's crime was racially motivated. However, the court recognizes the value of presenting a full picture of a petitioner's history in capital sentencing and PCR proceedings.

The record, however, suggests otherwise. While PCR counsel may not have traced Mahdi's lineage all the way back to 1648, as Mr. Dworkin did, they did present evidence regarding Mahdi's family's history, racial views, and significant experiences with racism, and the very segregated nature of their environment. (*See, e.g.,* App. A00126061 (describing Brunswick County as "very southern, very gracious, very segregated, very entrenched in maintaining that and keeping it that way"); App. A001268 (impact on Mahdi of attending desegregated school and description of desegregation in Virginia); App. A001270 (Nancy Burwell's views of race issues and skin tone); App. A001481 ("[Brunswick County] was a very segregated community"); App. A001484-85 (Burwell family's use of slave terms); App. A001487–89 (Burwell family's attitudes about skin tone); App. A001533-36 (discussion regarding great-great-grandfather who may have gone to Harvard University); App. A001543 (Mahdi's preoccupation with conspiracy theories along racial lines product of father's influence); App. A001571 (Mahdi indicated he reached a point where he stopped listening to his father's rants about racial injustice)). Thus, while PCR counsel did not specifically proffer an argument grounded in race-based trauma, race and its implications for, and impact on, Mahdi and his mixed-race family in rural, segregated Virginia was woven throughout much of the testimony and evidence presented to the state PCR court.

"Effective assistance of appellate counsel 'does not require the presentation of all issues on appeal that may have merit.'" *United States v. Mason*, 774 F.3d 824, 828-29 (4th Cir. 2014) (quoting *Lawrence v. Branker*, 517 F.3d 700, 709 (4th Cir. 2008)). Rather, the court should find ineffective assistance for failure to pursue a claim "only when ignored issues are clearly stronger than those presented." *Smith v. Robbins*, 528 U.S. 259, 288 (2000) (citation omitted). And "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for

tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003). Mahdi has not provided any information suggesting PCR counsel's failure to pursue this claim was not strategic and the court cannot find that PCR counsel were deficient for not raising this specific claim in light of a record indicating thorough and zealous representation, including presenting the facts on which this claim would have been based.

Physical Abuse

In an interview with Mr. Dworkin, Nate Burwell, IV, Mahdi's first cousin, recalled Mahdi's father, Shareef, beating both Mahdi and Saleem. (*See* ECF No. 113-1 at 6). Neither trial nor PCR counsel interviewed Nate Burwell. However, trial and PCR counsel's teams did interview Shareef and had continuing contact with Mahdi. It would be "unreasonable to discount to irrelevance the evidence of [Mahdi's] abusive childhood." *Porter*, 558 U.S. at 43. However, "[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. Here, the record shows that counsel and the mitigation team had significant contact with two people who would have known about the abuse—Shareef and Mahdi—and neither disclosed this information. Counsel cannot now be held accountable for information Mahdi and his father, though interviewed, failed to provide at the time of sentencing or PCR proceedings. *See DeCastro v. Branker*, 642 F.3d 442, 456 (4th Cir. 2011) ("Regardless, the state court did not act unreasonably in refusing Petitioner's attempt to upend his conviction and sentence based on the information that he failed to timely provide to counsel.").

Shareef

In speaking with Mr. Dworkin, Shareef indicated that race and the family's slave roots were an important part of his identity. (ECF No. 113-1 at 4). He stated he changed his name from Thomas Burwell because, "They don't own us anymore." *Id.* Shareef described ascribing to a Jihadist mentality when the boys were young, imparting those radical views to his sons, and subjecting them to religious and racial rants. *Id.* at 5. Mr. Dworkin also mentions Shareef's mental illness, attempted murder of Vera in front of the boys, and removal of Mahdi from school. *Id.* at 4-5. Shareef stated he failed Mahdi and did not know how either of his sons survived. *Id.* at 5.

Both trial and PCR counsel's mitigation teams interviewed Shareef. However, as discussed above, counsel are not at fault if Shareef failed to provide pertinent information at the time of those interviews. In addition, the court notes that Shareef, although interviewed, did not testify, or provide an affidavit, or otherwise assist counsel at Mahdi's trial or at the PCR hearing. (*See* App. A001811 (Ms. Haas testifying Shareef was more focused on his personal beliefs than providing helpful information about Mahdi); App. A001875 (Mr. Walters testifying Shareef "refused to participate or his position was sort of standoffish and he didn't want to be involved")). Moreover, PCR counsel presented all of the information described in this portion of Mr. Dworkin's affidavit at the evidentiary hearing through other witnesses. (*See*, *e.g.*, App. A001464 (Shareef depressed, ranting and raving, hatred for white people); App. A001465 (Mahdi had to take care of Shareef and Saleem); App. A001467 (Shareef's home schooling consisted of teaching Mahdi how to be a warrior—"They practiced shooting and using knives and moving about in the countryside as if there was an enemy and how you could distract people and to do whatever you feel you need to do to the enemy. They were being taught that regularly on a daily basis."); App. A001421-23 (Sharon Pond testimony on

Shareef's involuntary commitment to mental health facility); App. A004148 (Douglas Pond stating Shareef became eccentric and radicalized after his conversion to Islam); App. A004149-51 (James Woodley's affidavit describing sending Shareef for mental health treatment and detailing Shareef's attempted murder of Vera)). Thus, Mahdi has failed to show exactly how PCR counsel were deficient in this regard.

Summer 2004

Next, Mr. Dworkin describes Mahdi's activities during the summer of 2004 after he was released from the Virginia Department of Corrections, including applying for food stamps, applying for a job, and making plans to complete his GED and attend a two-year college. (ECF No. 113-1 at 7-8). According to Mr. Dworkin, "These are steps one does not take if they are truly disengaged from society." *Id.* at 8. He suggests these actions show an attempt by Mahdi to break with Shareef's indoctrination and to take his second chance at life outside of prison seriously. *Id.* Mr. Dworkin indicates Mahdi's efforts were thwarted when his support system evaporated—when Shareef moved to Philadelphia and his grandmother and uncle no longer allowed him to live with them. *Id.*

However, while Mahdi may have engaged in these positive activities, the record and Mahdi's own statements to counsel and their experts indicate he also spent that summer attempting to create an artificial drug drought to advance his own drug distribution operation by killing, or arranging the killing of, other drug dealers. (*See, e.g.,* App. A001752-53 (Mahdi told Dr. Martin he had murdered someone in a bad drug deal in Virginia and that he left to avoid homicide detectives); App. A001788-89 (Mahdi told Dr. McKee he left Virginia because there was a rumor he killed someone and that someone had died in a drug deal, but he was not the trigger man); App. A001831-32 (Mahdi told Mr. Grant he left Virginia because he was involved in an incident where someone was killed

or stabbed); App. A001843 (Mahdi told Mr. Walters he wanted to create an artificial drought by killing a number of drug dealers so everyone would have to buy drugs from Mahdi and his associates and, in the process of implementing this plan, someone was killed)). In addition, at sentencing, trial counsel objected to testimony by a State witness that Mahdi was pedaling drugs and "knocking off" young dealers between May and July 2004. (App. A003376, 3386-87).

Thus, trial counsel could have made a reasonable strategical decision not to introduce evidence that Mahdi attempted to re-engage with society after being released from prison, which would have opened the floodgates to the introduction of even more evidence in aggravation, particularly evidence that Mahdi was dealing drugs and may have committed or been involved in another murder. *See Wong v. Belmontes*, 558 U.S. 15, 25 (2009) ("The type of 'more-evidence-is-better' approach advocated by Belmontes and the Court of Appeals might seem appealing—after all, what is there to lose? But here there was a lot to lose. A heavyhanded case to portray Belmontes in a positive light, with or without experts, would have invited the strongest possible evidence in rebuttal—the evidence that Belmontes was responsible for not one but two murders."); *Moody v. Polk*, 408 F.3d 141, 151-52, 154 (4th Cir. 2005) (finding no prejudice where additional evidence was "double-edged," as likely to harm the petitioner as to help him). Counsel's choices are presumptively reasonable, *Pinholster*, 131 S.Ct. at 1404, and "there is a strong presumption that [counsel took certain actions] for tactical reasons rather than through sheer neglect." *Id.* at 1404 (quoting Strickland, 466 U.S. at 690). *See also Byram v. Ozmint*, 339 F.3d 203, 209 (4th Cir.2003) ("[R]eview of counsels' strategic decisions as to which evidence to present at trial is 'highly deferential,' and there is a presumption that 'counsels' conduct falls within the wide range of reasonable professional assistance.' " (*quoting Strickland*, 466 U.S. at 689). The court cannot find

PCR counsel ineffective for failing to raise this meritless issue.

Nancy Burwell's Letters

Mr. Dworkin also offers evidence that Mahdi's trial counsel disengaged from the Burwell family, despite the family's desire to help with the case. (ECF No. 113-1 at 8-9). Specifically, he mentions letters from Nancy Burwell to Mahdi's North Carolina attorneys in 2005 indicating she could not reach South Carolina counsel and felt "idle in the dark." *Id.* Nancy also wrote to North Carolina counsel in March 2006, requesting they prep her for testimony. *Id.* at 9. And, in October 2006, Nancy asked North Carolina counsel to send her the name and phone number of the South Carolina attorney who took over for Mr. Grant. *Id.*

To the extent Mahdi argues PCR counsel should have presented evidence that trial counsel did not adequately engage with Mahdi's family, this claim is without merit. PCR counsel specifically argued that trial counsel did not interview enough family members, did not adequately interview the ones they did interview, and did not maintain contact with the family throughout the investigation. In furtherance of this argument, PCR counsel asked each witness whether and to what extent trial counsel, or their mitigation team, spoke with them. (*See, e.g.*, App. A001294, A001327-28, A001341-42, A001359-60, A001387-88).

Further, if Mahdi's argument is that PCR counsel should have asserted trial counsel were ineffective in failing to maintain contact with Nancy or failing to call her at sentencing, that claim also lacks merit. Trial counsel's mitigation team interviewed Nancy and had enough contact with her that she attended Mahdi's sentencing. Further, it appears trial counsel intended to call Nancy as a witness and spoke with her throughout sentencing to prepare her testimony. However, counsel testified that Nancy continued to focus on her family's accolades and would not get to the meat of

Mahdi's upbringing, or any particularly helpful information, so they made a strategic decision not to call her. (*See* App. A001859-60). Decisions concerning the calling of witnesses are matters of strategy left to the attorney, which ordinarily cannot constitute ineffective assistance. *Jones v. Barnes*, 463 U.S. at 808. *See also Byram*, 339 F.3d at 209 ("[R]eview of counsel's strategic decisions as to which evidence to present at trial is 'highly deferential,' and there is a presumption that 'counsel's conduct falls within the wide range of reasonable professional assistance.' " (*quoting Strickland*, 466 U.S. at 689)). Again, counsel's choices are presumptively reasonable, *Pinholster*, 131 S.Ct. at 1404, and "there is a strong presumption that [counsel took certain actions] for tactical reasons rather than through sheer neglect." *Id.* at 1404 (quoting *Strickland*, 466 U.S. at 690). Based on the evidence in the record, there was a reasonable basis to not call Nancy as a witness.

For the foregoing reasons, Mahdi has failed to show that PCR counsel's performance was deficient. Accordingly, Mahdi has failed to show cause under *Martinez* and these portions of Ground Two remain defaulted.

Fundamentally Altered

Finally, Mahdi asserts the new information included in Mr. Dworkin's affidavit fundamentally alters Ground Two such that "it is no longer the same claim that was presented to and adjudicated by the state courts" and is procedurally unexhausted. (ECF No. 113 at 47). New evidence in a federal habeas matter fundamentally alters a claim where the petitioner did not offer any evidence to the state courts supporting the existence of a material fact. *See Winston v. Kelly*, 592 F.3d 535, 550 (4th Cir. 2010) ("Suppose, for example, that a petitioner on federal habeas introduces new evidence to establish the existence of a fact X, a fact required to prove his claim. The claim will inevitably be stronger, regardless of the evidence the petitioner presented to the state courts.

However, if the petitioner presented *no evidence* to the state courts to establish the existence of fact X, the claim will be fundamentally altered by the new evidence presented to the district court.") (emphasis in original).

Mahdi argues PCR counsel offered no evidence to support claims of race-based trauma or the extent of Shareef's abuse and, therefore, "no reasonable fact-finder . . . could have found the facts necessary to support [these] claim[s] from the evidence presented to the state courts." (ECF No. 113 at 48 (quoting *Winston*, 592 F.3d at 551)). However, as discussed above, the evidence in Mr. Dworkin's affidavit was included, to various degrees, in the PCR evidentiary hearing. Thus, while Mr. Dworkin's affidavit "has perhaps strengthened [Mahdi's] claim, . . . it has not 'fundamentally altered' it." *See Gray v. Zook*, 806 F.3d 783, 799 (2015). The heart of the claim remains the same: Mahdi's trial attorneys should have investigated and presented more mitigating evidence regarding Mahdi's background. *See id.* Accordingly, Mahdi's new evidence has not fundamentally altered Ground Two and the claims remain exhausted and subject to deferential review.

Prejudice

The court is keenly aware of the fundamental importance of this matter and the weight of this ground in particular. It has, accordingly, conducted an exhaustive and meticulous review of the record and the parties' filings. However, it is clear that PCR counsel and the PCR court carefully and thoroughly presented and reviewed this claim. This claim encompassed the bulk of the evidence presented in the three-day evidentiary hearing and ninety-six pages of the PCR Order.[30] And, after its own independent review, the court cannot find the PCR court's decision was contrary to, or an

[30]The court notes this not as proof of the correctness of the PCR court's findings, but as evidence of the extent and depth of its consideration of Mahdi's claims in this ground.

unreasonable application of, Supreme Court precedent, or based on an unreasonable determination of the facts as presented in the state court proceedings.

Further, even if the court accepts as true Mahdi's assertions that the PCR court made erroneous credibility determinations, the mitigating evidence presented at PCR was not cumulative of the sentencing evidence, and trial counsel did not have a reasonable strategic reason for limiting their mitigation presentation, Mahdi has not shown prejudice.

Mahdi contends additional mitigating evidence would have given context to the State's aggravating evidence, humanized Mahdi, and generally influenced Judge Newman's appraisal of Mahdi's culpability such that he could have struck a different balance and imposed a life sentence. (*See* ECF No. 113 at 41-42). The court disagrees. More humanizing information about Mahdi's unstable and troubled childhood, glimpses of his potential from elementary school teachers, and a clearer picture of his father's negative and abusive influence could not counterbalance the overwhelming evidence in aggravation, including: a video of Mahdi shooting a convenience store clerk in the face twice and casually walking out with a beer; evidence that Mahdi shot Captain Myers nine times, set fire to his body, and stole his truck and gun to run from police; Mahdi's statements to police when captured in Florida; Mahdi's extensive history of disciplinary violations in prison, including violence and threats of violence against employees and escape attempts, even when contained in SCDC's most secure unit; and the fact that Mahdi planned to effectuate an escape in Judge Newman's own courtroom.[31]

Further, along with the new mitigating information presented at the PCR evidentiary hearing

[31]There is also evidence of Mahdi's apparent lack of remorse in the record. *See* supra p. 57. *But see also* supra p. 56.

came new aggravating information.[32] At least three mental health professionals had diagnosed Mahdi with antisocial personality disorder. (ROA 1899 (Virginia Department of Corrections psychological evaluation diagnosing Mahdi with antisocial personality disorder and intermittent explosive disorder); App. A001700, A001705 (Dr. Schwartz-Watts's diagnoses, including major depression, anxiety disorder, reactive attachment disorder, paranoid personality disorder, and antisocial personality disorder and explanation of antisocial personality disorder); App. A001756 (Dr. Martin's findings)[33]; App. A001790 (Dr. McKee's findings)). Mahdi's brother, who grew up

---

[32]The court notes that in the record there is also new additional aggravating information, which was not available at Mahdi's sentencing. For example, the PCR hearing itself had to take place in a parole hearing room at Broad River Correctional Institution, rather than an open courtroom, due to security concerns after Mahdi and another death row inmate brutally assaulted a guard in 2009. (*See* App. 001247; ECF No. 104 at 10 n.11; SCDC Inmate Search Detail Report for Mikal D. Mahdi (listing a disciplinary infraction on December 2, 2009, for Assault and Battery of an Employee with Intent to Kill or Injure), *available at* https://public.doc.state.sc.us/scdc-public; *see also* Glenn Smith, Assaulted Lieber Prison Guard Loses Job - Corrections Officer Stabbed 14 Times Unable to Work Due to PTSD, The Post and Courier (July 27, 2013), available at https://www.postandcourier.com/archives/assaulted-lieber-prison-guard-loses-job-corrections-officer-stabbed-times/article_1b8403dc-b5a8-5ed3-85f1-98f4b46d920d.html). While the court has not included this new information in its current analysis, this information would most likely be presented at any re-sentencing. *See, e.g., United States v. Stitt*, 760 F. Supp. 2d 570, 580 (E.D. Va. 2010) (noting, in the context of a re-sentencing trial in a capital case, that "new evidence in support of a properly drafted aggravating factor . . . is appropriate and acceptable").

[33]Dr. Martin's findings seem particularly measured and illuminating:

> I believe - - and this is somewhat consistent with what I found in the Carter Center reports is that [Mahdi] had a behavioral problem that led to a lot of failed relationships, interactions that were hostile aggressive, sometimes quite violent in nature, and that he had some depressive issues that were, I believe, to be subsequently recurrent due to failure to integrate into society.
>
> I found that he was a loner; that he had - - He actually attributed a lot of his attitude and outlooks on life to his father almost in a condemning way and that he was essentially becoming a racist militant in his own way. His outlook on life was quite violent. His way of surviving is by force. He seemed to have no difficulty talking about killing people if necessary in order to achieve independence.

under the same circumstances as Mahdi, witnessed the same violence, was subject to the same indoctrination and alleged abuse at the hands of their father, and acted out as a child, went into Job Corps and then the United States Army, rather than embarking on a life of crime and violence. (App. A001524 (Lawanda Burwell testifying Saleem was in the U.S. Army and had served two tours in Afghanistan); App. A001556–58 (Dr. Cooper-Lewter testifying Saleem went into Job Corps)). PCR testimony and exhibits also introduced more evidence of Mahdi's history and continued exhibition of serious disciplinary infractions, including violence, while incarcerated.[34]

And the PCR evidence illuminated some new less-than-favorable details about Mahdi's Virginia–North Carolina–South Carolina–Florida crime spree.[35] In particular, the PCR court learned that Mahdi fled from possible murder charges in Virginia after his involvement in a bad drug deal. (*See, e.g.*, App. A001843). Prior to carjacking Mr. Pitts at gunpoint, Mahdi pretended to be

---

. . . .

> And so I put with the information I gathered from the team meetings where he was very manipulative in his family and society making recurrent suicidal threats. I believe even his uncle reportedly had said he does this all the time to get his way; that his ability to follow social norms, adhere to authority was pretty much difficult to impossible at times. So I actually made the diagnosis of antisocial personality disorder for Mr. Mahdi as the primary diagnosis.

(App. A001755-56).

[34]Mahdi's complete DJJ records list over forty disciplinary violations, including assaults on teachers, guards, and other incarcerated youth and leading an escape attempt. (*See* PCR Def. Exh. 6, DJJ Discipline Information, App. A007545-862). While incarcerated in the Virginia prison system as an adult, Mahdi assaulted staff and set fire to his cell. (*See* ROA 1865; ROA 1876-2136). Mahdi was also transferred within the Virginia Department of Corrections due to his "continued poor institutional adjustment and increase in security level." (ROA 1865).

[35]The following information comes from Mr. Walters's account of information he learned through conversations with Mahdi and through his investigation.

homeless in order to take advantage of a homeless shelter's facilities and resources. (App. A001845). While staying at the homeless shelter, Mahdi realized a nearby street was used for prostitution at night, so he devised a plan to impersonate a prostitute in order to execute a carjacking. (App. A001845). On his way to Florida, in Captain Myers's truck, Mahdi stopped for gas and somehow rigged a gas pump so that the cashier would not realize he had finished pumping his gas and taken off. (App. A001847). And, when he arrived in Florida, Mahdi put on Captain Myers's uniform and investigated a crime reported by a woman who saw him on the street and assumed he was a real police officer. (App. A001847-48).

The PCR court properly weighed all of this aggravating and mitigating evidence and reasonably concluded the additional evidence offered at PCR did not create a reasonable probability Mahdi would have received a different sentence. (*See* App. A000166-81). Thus, the court cannot find the PCR court's conclusion that Mahdi failed to show prejudice was contrary to, or involved an unreasonable application of, clearly established federal law or was based on an unreasonable determination of the facts.

Further, from this court's own independent review of all of the evidence offered throughout the course of this matter, including the evidence at trial, the evidence at PCR, and the new federal habeas evidence, the court finds the scales remain tipped in the State's favor. The record at every stage has continued to suggest that Mahdi is violent, intelligent, manipulative, and only barely contained within our prison system. On direct appeal, then Chief Justice Toal felt so strongly about this case that she wrote a separate concurring opinion to highlight the "heinous" and "egregious" nature of Mahdi's acts. *See Mahdi v. State*, 678 S.E.2d at 808-09. After reciting the facts of Mahdi's crime, Chief Justice Toal, at that time a twenty-one year veteran of the court, concluded: "In my time

on this Court, I have seen few cases where the extraordinary penalty of death was so deserved." *Id.* at 809.

Therefore, even assuming that counsel were deficient in all the ways Mahdi alleges, after independently reweighing all of the aggravating and mitigating evidence, the court concludes that, absent the alleged errors, there is no reasonable probability that Judge Newman would have reached a different sentencing decision and the court remains confident in this case's outcome. *See Strickland*, 466 U.S. at 700 ("Given the overwhelming aggravating factors, there is no reasonable probability that the omitted evidence would have changed the conclusion that the aggravating circumstances outweighed the mitigating circumstances and, hence, the sentence imposed."); *Plath v. Moore*, 130 F.3d 595 (4th Cir. 1997) (finding "when considered against the sheer magnitude of the aggravating evidence against [the petitioner], it is difficult to see the allegedly unreasonable omission of this mitigating evidence as prejudicial").

Request for an Evidentiary Hearing

The court has granted Mahdi's request to expand the record and has considered the evidence offered in Mr. Dworkin's affidavit. However, for the reasons above, Mahdi has failed to show cause and prejudice to excuse the defaulted portions of Ground Two. In addition, Mahdi has not alleged any new facts that would warrant habeas relief if proven. *See Schriro*, 550 U.S. at 474 ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief."). Moreover, in this case, Mahdi has already received a full hearing, which included the presentation of the pertinent evidence offered in support of his claims and he has not shown, and the court has not found, any reason to question the fairness of that

hearing. Thus, the court finds no reason to expend additional judicial resources and upend the finality of the state court's determination. Accordingly, the court denies Mahdi's request for an evidentiary hearing on Ground Two.

GROUNDS THREE & FOUR – CONSTITUTIONALITY OF SOUTH CAROLINA'S DEATH PENALTY STATUTE

In Ground Three, Mahdi claims South Carolina's death penalty statute, S.C. Code Ann. § 16-3-20, is unconstitutional because it automatically precludes jury sentencing following a guilty plea.[36] Although this claim was not presented in Mahdi's original PCR application, Mahdi asserts it is appropriate for habeas review because the United States Supreme Court's decision in *Hurst v. Florida*, ___ U.S. ___, 136 S.Ct. 616 (2016), established a new constitutional rule requiring jurors to make all factual findings necessary for imposition of the death penalty and that rule applies retroactively to Mahdi's sentence. Respondents contend *Hurst* did not create a new rule of constitutional law, but was an application of *Ring v. Arizona*, 536 U.S. 584 (2002), to Florida's capital sentencing scheme.

The court previously addressed this issue in its order denying Mahdi's motion to stay (ECF No. 91) and agreed with Respondents, finding "[t]he holding in *Hurst* was not a significant change

[36]Mahdi first presented this claim in his second PCR application as an independent ground, arguing that the United States Supreme Court's decision in *Hurst v. Florida*, __ U.S. ___, 136 S.Ct. 616 (2016), announced a new rule of constitutional law that applied retroactively to his death sentence. Mahdi contends the second PCR court decided this claim on the merits. But, Respondents assert the second PCR court dismissed the claim as time-barred and improperly successive on adequate and independent state law grounds. The court will not decide this procedural dispute, but instead addresses this ground on the merits.

in the law as the Supreme Court simply applied prior precedent, its holdings in *Ring* and *Apprendi*,[37] to Florida's capital sentencing statutes." (ECF No. 91 at 4); *see also Hurst*, 136 S.Ct. at 621–22 (granting certiorari "to resolve whether Florida's capital sentencing scheme violates the Sixth Amendment in light of *Ring*" and analyzing Florida's statute under *Ring*'s framework). In addition, the court found the holding in *Hurst* did not apply retroactively. (ECF No. 91 at 4-5 (citing *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004) (holding that "*Ring* announced a new procedural rule that does not apply retroactively to cases already final on direct review"); *United States v. Sanders*, 247 F.3d 139 (4th Cir. 2001) (holding the new rule announced in *Apprendi* not retroactively applicable to cases on collateral review); *Tyler v. Cain*, 533 U.S. 656, 663 (2001) (holding that a "new rule of constitutional law" is "made retroactive to cases on collateral review by the Supreme Court" only if the Supreme Court holds as much). Mahdi has not provided the court with reason to alter these findings.

Further, the court finds South Carolina's capital sentencing procedures have not violated Mahdi's constitutional rights. In *Ring*, the Supreme Court found that Arizona's capital sentencing structure violated the Sixth Amendment right to a jury trial in capital prosecutions. Under Arizona's statute, "following a jury adjudication of a defendant's guilt of first-degree murder, the trial judge, sitting alone, determine[d] the presence or absence of the aggravating factors required" to impose the death penalty. *Ring*, 536 U.S. at 588. Applying its reasoning from *Apprendi*, the Court found that "[b]ecause Arizona's enumerated aggravating factors operate as 'the functional equivalent of an element of a greater offense,'" a defendant has a right to submit those factors to a jury for

[37] *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (holding that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt").

determination. *Id.* at 609. Thus, *Ring* established that when a defendant exercises his right to a jury trial on a capital offense, he is entitled to have a jury determine any aggravating factors necessary to impose a death sentence.

In *Hurst*, the Court applied its reasoning in *Ring* to Florida's capital sentencing scheme. In Florida, "[a] person who ha[d] been convicted of a capital felony [would] be punished by death" only if an additional sentencing proceeding "result[d] in findings by the court that such person [would] be punished by death." Fla. Stat. § 775.082(1) (2010) (amended 2016). Under this statute, if a jury convicted the defendant of a capital felony, a sentencing judge would conduct an evidentiary hearing before the jury and the jury would issue an "'advisory sentence' of life or death without specifying the factual basis of its recommendation." *Hurst*, 136 S.Ct. at 620 (citing Fla. Stat. § 921.141(1)–(2) (2010) (amended 2016)). "Notwithstanding the recommendation of the jury, the court, after weighing the aggravating and mitigating circumstances, [would then] enter a sentence of life imprisonment or death." Fla. Stat. § 921.141(3) (2010) (amended 2016). Thus, although the court afforded some weight to the jury's recommendation, "[l]ike Arizona at the time of *Ring*, Florida [did] not require the jury to make the critical findings necessary to impose the death penalty." *Hurst*, 136 S.Ct. at 622. Because this procedure allowed a judge to increase a defendant's maximum penalty based on his own factfinding, the Court held Hurst's sentence violated the Sixth Amendment. *Id.*

The South Carolina Supreme Court has distinguished South Carolina's statute from Arizona's (and Florida's) because, in South Carolina, "a defendant convicted by a jury can be sentenced to death only if the jury also finds an aggravating circumstance and recommends the death penalty." *State v. Downs*, 604 S.E.2d 377, 380 (S.C. 2004); *State v. Wood*, 607 S.E.2d 57, 61 (S.C. 2004). Thus, if a capital defendant in South Carolina exercises his right to a jury trial, a jury must

determine both his guilt and sentence. However, if a capital defendant pleads guilty, and waives his right to a jury trial, *Ring* is not applicable. *See id*. (finding *Ring* "did not involve jury-trial waivers and is not implicated when a defendant pleads guilty" under South Carolina's death penalty statute); *Lewis v. Wheeler*, 609 F.3d 291, 309 (4th Cir. 2010) (discussing a challenge to Virginia's capital sentencing scheme, which is functionally equivalent to South Carolina's,[38] and finding *Ring* did not hold "that a defendant who pleads guilty to capital murder and waives a jury trial under the state's capital sentencing scheme retains a constitutional right to have a jury determine aggravating factors").

During his colloquy with Judge Newman, Mahdi expressed, under oath, an understanding of his right to a jury trial and sentencing; what that trial and sentencing would require, including the State's burden of proof; the nature of the charges against him and possible sentences, including death; and that if he pled guilty, Judge Newman would determine his sentence, not a jury. (*See* App. A003219–32). Along with waiving his right to a jury trial (App. A003227), Mahdi expressly and voluntarily waived his right to jury sentencing (App. A003225). In addition, Mahdi admitted to the facts of the crime as stated by the Solicitor. (App. A003233-43).

Mahdi argues that, although he pled guilty to grand larceny and second-degree burglary and admitted to the relevant facts, in order to find the related statutory aggravating circumstances and impose the death penalty, Judge Newman had to find the additional fact that Mahdi murdered Captain Myers while committing these crimes with the use of a deadly weapon. (ECF No. 75 at 31).

---

[38]Under Virginia's capital sentencing scheme, when a defendant is charged with a death-eligible offense, the trial court first submits the issue of guilt or innocence to a jury. If the defendant is found guilty, then the same jury decides the penalty. However, if a defendant pleads guilty and waives his right to a jury determination of guilt, a judge conducts the sentencing proceeding alone and determines the existence of any aggravating factors. *See* Va. Code Ann. § 19.2-257.

However, Mahdi specifically admitted to this fact during his guilty plea:

> **THE COURT**: And did you, on or about July 18th, 2004, at around the same time and date as the murder, enter the building belonging to James E. Myers and Amy Tripp Myers without their consent, with intent to commit a crime therein? And while in the building or during the immediate flight or leaving the building, were you armed with a deadly weapon? And did you cause physical injury, including the killing of Mr. Myers with the pistol during this same burglary?
>
> **DEFENDANT MAHDI**: Yes, sir, Your Honor.
>
> **THE COURT**: And did you steal the officer's - - the 2003 Dodge Ram truck in the possession of the officer and owned by the City of Orangeburg?
>
> **DEFENDANT MAHDI**: Yes, sir, Your Honor.

(App. A003243-44).

Mahdi also asserts *Hurst* requires jurors to consider "statutory and non-statutory mitigating factors, the specific circumstances of the crime, [and] the character of the defendant." (ECF No. 75 at 32). This argument misses the central holding of *Apprendi*, *Ring*, and *Hurst* — juries must find facts necessary to *increase* a defendant's penalty. These cases do not address mitigation.

Given Mahdi's voluntary waiver and admission to the relevant facts, judicial sentencing did not violate Mahdi's Sixth Amendment rights. *See Blakely v. Washington*, 542 U.S. 296, 303, 310 (2004) (holding that under *Apprendi*, a judge may impose any sentence authorized "on the basis of the facts . . . admitted by the defendant" and noting "nothing prevents a defendant from waiving his *Apprendi* rights"). Accordingly, Mahdi's constitutional challenge to South Carolina's death penalty statute fails on the merits.

In Ground Four, Mahdi asserts his trial counsel were ineffective for failing to challenge the

constitutionality of South Carolina's death penalty statute under *Apprendi*, *Ring*, and *Blakely*.[39] Having found South Carolina's death penalty statute constitutionally sound under these standards, the court finds trial counsel were not ineffective for failing to raise a meritless claim.[40] Accordingly, Mahdi is not entitled to habeas relief on Grounds Three or Four.[41]

GROUNDS FIVE, SIX, & SEVEN – THE GUILTY PLEA

In Grounds Five, Six, and Seven, Mahdi contends he involuntarily pled guilty due to trial counsel's bad advice (Grounds Five and Six) and that trial counsel were ineffective in failing to object to Judge Newman allegedly penalizing Mahdi for initially exercising his right to a jury trial (Ground Seven).[42] The Sixth Amendment's guarantee of effective assistance of counsel applies with

---

[39]Mahdi raised this ground in his initial PCR application and, pursuant to *Austin v. State*, 409 S.E.2d 395, in his second PCR application and asserts he can overcome any procedural default under *Martinez v. Ryan*. (ECF No. 75 at 36-37). Because the court decides this claim on the merits, it will not address the parties' procedural arguments.

[40]This is especially true given the state of the law at the time of Mahdi's trial. In the two years prior to Mahdi's trial, the Supreme Court of South Carolina decided three cases expressly finding the death penalty statute constitutional and noting *Ring* was not implicated when a capital defendant pled guilty. *See State v. Crisp*, 608 S.E.2d 429, 432-33 (S.C. 2005); *State v. Downs*, 604 S.E.2d 377, 380 (S.C. 2004); *State v. Wood*, 607 S.E.2d 57, 61 (S.C. 2004).

[41]In addition, the court denies Mahdi's request for an evidentiary hearing on these grounds. The court sees no basis for a hearing on these record-based claims that turn on legal interpretation and Mahdi has failed to show that his claims in Grounds Three and Four rely on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court" or that "the facts underlying the claim[s] would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense" or would have imposed the death penalty. § 2254(e)(2)(A)(I), (B). Further, regarding Ground Four, Mahdi raised this ground in his original PCR application, had a full opportunity to present any supporting evidence at the PCR evidentiary hearing, and has not alleged the discovery of any new facts since that hearing.

[42]Mahdi raised Grounds Five and Seven in his initial PCR application and in his second application pursuant to *Austin v. State*, 409 S.E2d at 395. He only raised Ground Six in his second application. Because the court decides these claims on the merits, it will not address the parties'

equal force to critical pretrial matters, including deciding whether to plead guilty. *See Lafler v. Cooper*, 566 U.S. 156, 165 (2012); *Hill v. Lockhart*, 474 U.S. at 58. *Strickland*'s two-part test governs the court's analysis, but here, the prejudice prong "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Hill v. Lockhart*, 474 U.S. at 59. "In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States.*, __ U.S. __, 137 S.Ct. 1958, 1966 (2017).

Mahdi asserts his trial counsel were ineffective for failing to adequately advise him of the advantages of jury sentencing (Ground Five) and for indicating Judge Newman would consider his guilty plea as mitigating evidence (Ground Six). The court finds Mahdi's assertions are directly contradicted by the record.

After the jury was impaneled, but before it was sworn, Mahdi and Mr. Walters had an ex parte meeting with Judge Newman to inform the court Mahdi was considering pleading guilty. At this meeting, Mr. Walters indicated he and Mahdi had discussed the implications of Mahdi's decision, including the "pluses and minuses" of jury sentencing and Judge Newman's policy of not agreeing to a certain sentence based on a plea:

---

procedural arguments. However, the court notes its findings here are consistent with the PCR court's findings on Grounds Five and Seven (*see* App. A000080-85) and the court's conclusion that Ground Six lacks merit forecloses Mahdi's argument that its default can be excused under *Martinez*. Thus, under either standard of review, these grounds are subject to summary judgment.

> Your Honor, I've discussed with my client options that are available with regards to this case. Mr. Mahdi is very intelligent and in conveying the options to him, of course, he's aware of the fact that there are two phases to a trial, the guilt phase and also the sentencing phase, if it should get to that point.
>
> . . . .
>
> What's been conveyed to Mr. Mahdi is, is that there are no guarantees with regards to either process. We have a jury that's been empanelled [sic] and there are certain pluses and minuses with that jury. And, of course, Mr. Mahdi's in a position where he's saying, well, what about the Judge. And, of course, Your Honor's conveyed from the beginning that there is no policy by this Court that they will agree to a plea or agree to a certain sentence being reduced.
>
> So I've explained to him that there are no guarantees wherever you go. And, of course, he's pondering the issue of whether he should proceed forward with trial or whether he should go in front of Your Honor and plead guilty.
>
> Of course, with the second phase with regards to the sentencing phase, he has been informed that the State will have to put up their case and information and, of course, he'll be allowed to put up information. The question is whether he will do that in front of a jury or whether he will do that in front of a judge. And, again, there are no guarantees and there are pluses and minuses with regards to either option that he pursues.

(App. A003205-06). In addition, Judge Newman reiterated to Mahdi and Mr. Walters his "long-term policy" of considering all of the evidence in a case before determining the outcome, rather than "decid[ing] a case in chambers" based on a guilty plea. (App. A003209).

After this exchange, Mahdi had the rest of the day and the next morning to speak with counsel and his grandmother and think about his decision. (App. A003207-09). In court the next day, Mr. Walters stated he had thoroughly discussed the case with Mahdi and continued to counsel him after the ex parte meeting and again the following morning regarding his decision to plead guilty. (App. A003212). During his plea colloquy, Mahdi indicated that he understood how a jury trial and sentencing would proceed and the rights he was choosing to waive. (App. A003223-27).

Further, Mahdi stated he had enough time to discuss his decision with his attorneys, understood those discussions, and was completely satisfied with his attorneys' services. (App. A003227-29).

Mr. Walters offered additional insight into Mahdi's decision at the PCR evidentiary hearing, stating definitively that they wanted Judge Newman to sentence Mahdi because there was a better chance a judge would be able to remain focused on the issues, even after viewing the videotape of Mahdi murdering Mr. Boggs, and because it was close to Christmas and they were concerned an antsy jury might rush its decision. (App. A001922-23). This is the extent of the evidence in the record regarding conversations between Mahdi and trial counsel regarding the decision to plead guilty. The court finds nothing in this evidence to rebut the presumption that trial counsel provided effective representation and adequately advised Mahdi so that he could make a fully-informed decision to plead guilty.

In his response to the motion for summary judgment, Mahdi suggests for the first time that trial counsel were ineffective for advising him to plead guilty without obtaining a written guarantee that his plea would result in a life sentence. (ECF No. 113 at 64). In support, Mahdi cites to the ABA Guidelines[43] and a 2012 affidavit from PCR counsel, Teresa Norris, both of which instruct counsel to be wary of participating in a client's waiver of his trial rights without a written guarantee that death will not be imposed after a guilty plea. *Id.* at 65. However, other than these brief references to advisory authorities, Mahdi offers nothing to overcome the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466

[43]Mahdi specifically cites to the Commentary to the ABA Guideline 10.9.2, which provides, "If no written guarantee can be obtained that death will not be imposed following a plea of guilty, counsel should be extremely reluctant to participate in a waiver of the client's trial rights." (ECF No. 113 at 65).

U.S. at 689.[44] Thus, not only is this claim clearly procedurally barred, but Mahdi fails to show counsel's failure to obtain a written plea agreement amounts to constitutional ineffectiveness.

Mahdi also contends trial counsel "affirmatively misadvised" him that Judge Newman would consider his guilty plea in mitigation, leading Mahdi to believe he would not receive a death sentence if he pled guilty. (ECF No. 113 at 68-69). The court finds trial counsel are not at fault for Mahdi's alleged misunderstanding that his guilty plea would automatically preclude a death sentence. The record suggests Mr. Walters explicitly informed Mahdi that pleading guilty did not guarantee a life sentence. (App. A003205-06). Or, at the very least, Mahdi was present when Mr. Walters made this statement to Judge Newman. And, Judge Newman instructed Mahdi that he would decide between the two possible sentences after considering all of the evidence both at the ex parte meeting (App. A003209) and during the plea colloquy (App. A003223 (Mahdi stating he understands that the possible sentences in the case, if Judge Newman accepts his guilty plea, are life without the possibility of parole or death); A003224-25 (expressing understanding of what jury sentencing would entail and voluntarily waiving his right)).

Further, trial counsel's advice was not incorrect. Mr. Koger opened the defense's penalty phase case by pointing to Mahdi's full acceptance of responsibility by admitting guilt. (App. A003251). Judge Newman expressly incorporated the guilty plea into the penalty phase. (App. A003253). In his closing argument, Mr. Walters continued to emphasize Mahdi's acceptance of responsibility and admission of guilt. (App. A003677, 3683, 3684). Counsel argued Judge Newman should consider Mahdi's guilty plea as a nonstatutory mitigating circumstance. (App. A003698).

---

[44]The court finds these sources fall short of establishing obtaining written sentence guarantees in capital cases as a prevailing professional norm. As discussed earlier, the ABA Guidelines are merely guidelines. *See* supra p. 60.

And, in his sentencing order, Judge Newman stated:

> The defendant's guilty plea occurred during the fourth day of his trial following jury selection, but prior to the jury being sworn. This was one day following his attempted escape through the use of a homemade key. In addition, Mr. Mahdi has failed to demonstrate any remorse for his actions at any point in time known to this Court. Therefore, I conclude that no significant weight should be given to this nonstatutory mitigating circumstance and the Court's ultimate decision as to the sentence to be imposed.

(App. A003698-99).

Mahdi asserts this portion of the sentencing order shows Judge Newman not only did not consider Mahdi's guilty plea as mitigating evidence, but actually penalized Mahdi for exercising his right to a jury trial before deciding to plead guilty. The court disagrees. In considering a guilty plea as mitigation for sentencing, the judge is also evaluating the defendant's acceptance of responsibility for his crime. Acceptance of responsibility can also be evidenced through expressions of remorse or actions suggesting a genuine desire to submit to an appropriate penalty or make positive behavioral changes.

Here, Judge Newman considered Mahdi's guilty plea, but in context. Waiting to plead guilty until after the selection of a jury could suggest a decision that is more strategic in nature. And Mahdi's attempted escape one day prior to pleading guilty is inconsistent with an acceptance of responsibility for his crime. Judge Newman, who was in a unique position to assess these factors, did not refuse to consider Mahdi's guilty plea or penalize him for the timing. Instead, he properly assessed how the plea, in context, reflected Mahdi's character and, in particular, his alleged acceptance of responsibility. This is exactly the type of individualized consideration required in capital sentencing. *See Lockett v. Ohio*, 438 U.S. 586, 605 (1978) ("Given that the imposition of death by public authority is so profoundly different from all other penalties, we cannot avoid the

conclusion that an individualized decision is essential in capital cases.").

The Supreme Court has cautioned that, because "the strong societal interest in finality has 'special force with respect to convictions based on guilty pleas,' . . . [c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for an attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee*, 137 S.Ct. at 1967 (quoting *United States v. Timmreck*, 441 U.S. 780, 784 (1979)). Having carefully considered the contemporaneous record evidence, the court finds Mahdi has failed to show deficiency or prejudice under *Strickland* and *Hill*.

To support Grounds Five through Seven, Mahdi has requested an evidentiary hearing "regarding the facts and circumstances that led to Mr. Mahdi pleading guilty, including the nature and extent of the advice provided to Mr. Mahdi by his trial counsel." (ECF No. 113 at 70). However, although presented with the opportunity, Mahdi did not offer evidence supporting Grounds Five and Seven in state court. And, he offers none now. Mahdi has not supported any of his conclusory allegations in these grounds with evidence, such as affidavits from previous counsel or from Mahdi himself regarding communications surrounding the decision to plead guilty.[45]

---

[45]Mahdi does provide two affidavits from his PCR counsel, both of which state that *Lafler v. Cooper*, 566 U.S. 156 (2012), and *Missouri v. Frye*, 566 U.S. 134 (2012), were decided after the evidentiary hearing, but before the PCR court's order of dismissal, that PCR counsel did not discuss moving to re-open the evidentiary hearing or otherwise supplement the record after those decisions, and that counsel did not discuss *Lafler* or *Frye* with Mahdi. (ECF Nos. 113-4, 113-5). These affidavits hint at allegations of ineffective assistance of PCR counsel. However, because the court decides these claims on the merits, it does not reach the issue of cause and prejudice to excuse default. Moreover, the Supreme Court has not held that the holdings in these cases established a new right retroactively applicable to cases on collateral review, and these cases are distinguishable as they involved the rejection of a plea offer, which is inapplicable to Mahdi's case as there were no plea negotiations (ROA 1355-56). *See Lafler*, 566 U. S. at 172 (holding that Sixth Amendment right to counsel is violated when a defendant receives a harsher sentence as a result of counsel's deficient advice to reject a plea bargain); *Frye*, 566 U.S. at 147 (holding that Sixth Amendment right to

Further, Mahdi has not alleged specific facts he could bring to light through an evidentiary hearing that would contradict the record evidence or alter the court's analysis of these issues. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief."). In addition, because Mahdi has failed to show his defaulted claims in Ground Six are substantial, he is not entitled to an evidentiary hearing on those claims. Accordingly, the court finds Mahdi is not entitled to relief on Grounds Five, Six, and Seven and denies Mahdi's request for an evidentiary hearing on these grounds.

CONCLUSION

After a thorough review of the record and the filings in this case pursuant to the standards set forth above, the court finds Mahdi's Petition without merit. Accordingly, Respondents' motion for summary judgment (ECF No. 105) is **GRANTED**; Respondents' motion to strike (ECF No. 125) is **GRANTED in part AND DENIED in part**; and the Petition (ECF No. 75) is DENIED **with prejudice**.

A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In the instant

---

counsel is violated when counsel failed to inform the defendant of a plea offer from the government). Accordingly, Respondents' motion to strike (ECF No. 125) is granted as to these two exhibits.

matter, the court finds that Petitioner has failed to make "a substantial showing of the denial of a constitutional right." Accordingly, the court declines to issue a certificate of appealability.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

September 24, 2018
Anderson, South Carolina

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Mikal D Mahdi

Petitioner

v.

Bryan Stirling, *Commissioner South Carolina Department of Corrections*;
Willie D Davis, *Warden of Kirkland Correctional Institution*,

Respondent(s)

Civil Action No. 8-16-cv-3911-TMC

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one):*

❒ the petitioner *(name)* _____ recover from the respondent *(name)* _____ the amount of _____ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

❒ the petitioner recover nothing, the action be dismissed on the merits, and the respondent *(name)* _____ recover costs from the petitioner *(name)* _____.

■ other: Summary Judgment is granted for Respondents and the petition is denied with prejudice.

This action was *(check one)*:

❒ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

❒ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

■ decided by the Honorable Timothy M Cain.

Date: September 24, 2018

CLERK OF COURT

s/L K McAlister, Deputy Clerk

Signature of Clerk or Deputy Clerk